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Reflections upon the Opinions OF Some Modern Divines, CONCERNING The Nature of Government.

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THE PREFACE.

'TIS a ſtrange and almoſt incomprehenſible thing, that at this time there ſhould be found ſo many diſcontented Perſons among us; when but a little while ſince, the whole Body of Proteſtants appeared ſo unanimous, viz. at the beginning of the miraculous Revolution. Though it hath already retrieved the State from Ruine, and will without doubt prove its Happineſs; it might eaſily be gueſs'd, that thoſe who had contributed to the overthrow of the Laws, apprehending the Reward they had ſo juſtly deſerved, would make up a Body of Malecontents, and that their Numbers would be conſiderable. 'Tis notorious alſo, that in all times, thoſe who think they are not conſidered or treated according to the Juſtice of their Merit, are ready to murmur againſt the Government; and the Ambition that poſſeſſes them, renders them every where, a Race of diſcontented Perſons. But whatever difference of Principles there might be among Proteſtants, the fear of their common danger having reunited them, and made their Intereſts the ſame with thoſe of the State and Religion, which they ſaw equally expos'd to inevitable Ruine, there ſeem'd but ſmall ground to apprehend, that as ſoon as the Fright was over, there ſhould ſtill be found a Generation of Men, whom their old Animoſities, and habitual Prejudices, would engage in diſaffection and murmuring againſt the Government. And yet it is but too true, that ſcarce did the State and Religion begin to breath again, but immediately there appeared a Party, who made it appear by their ſnarling, that what fill'd the generality of Men with Joy, and made them give Thanks to God, afforded them very ſmall Satisfaction. I pretend not to tax the whole Body of the English Church: It is well enough known, that as their Settlement was

furiously ſtruck at by Popery triumphant, and obſerving no kind of meaſures, her principal Members, as well as the generality of thoſe that reſort under her, have, and ſtill do witneſs their Zeal for the Government, which God has been pleaſed to eſtabliſh among us. I ſpeak only of ſome certain Members of this Church, whom the Court has long employed in overthrowing, by their Maxims, the Foundations of the Publick Liberty, in order to a ſure Eſtabliſhment of Popery. Thoſe Diſciples of L'Eſtrange, the Penſioner and Drudge of a Popiſh Court, no ſooner perceived that what was like to happen upon James the Second's Deſertion, would extremely expoſe them, as Men that had betrayed the Intereſts of their Religion and the Government, by Maxims which they had maintained with ſo much boldneſs, every where began to publiſh their diſcontent, and ſtill endeavour to inſpire the ſame into the People, as founded upon pure Tenderneſs of Conſcience.

It cannot be denied, but that hitherto the Government has ſhewed an extraordinary lenity, in reducing them to Reaſon, whom Danger ſeemed to have made wiſer. The method and careful management which has been made uſe of to obviate whatſoever might afford them the leaſt Jealouſie, or give them the leaſt trouble, is an evident Mark hereof. But in fine, ſince they continue in their Miſtakes notwithſtanding all this care and tenderneſs, and that nothing will ſatisfie them; what can be more prudently undertaken, than to prevent the pernicious Effects which their Example, and the Maxims wherewith they are leavened, might produce in the minds of the People. We have this Satisfaction already, that the Publick is well aware they know not themſelves what they would be at; for how free ſoever they may be to diſperſe their Murmurs and Diſaffection, yet probably there is ſcarce one among them that would have James II. recalled; neither indeed would it be ſo difficult a thing for them to find him out, in caſe their Conſciences link'd them ſo cloſely to him, as they would make us believe.

But we may have alſo another ſatisfaction in this Point; which is, That in examining their Maxims in good earneſt, we may make it appear, That they know not themſelves what they affirm; and that the Opinions they have ſo long maintained, concerning the Nature of Government in general, and that of England in particular, are properly and truly a Hereſie in Matters of State. Let no Man wonder that I call this Opinion of ſome of the Clergy of England, a

Political

Political or State-Hereſie. Their Opinions reſpect a Political Queſtion truly ſuch; but theſe Gentlemen have been pleaſed to mould it into an Article of Faith, forſooth, of the Church of England; *and their aim was to make that paſs for an Article of the Law, which indeed was no better than a dangerous Error in Policy. And truly all the Characters of Hereſie ſo fitly ſuit theſe their Sentiments, that it is a hard thing to reſiſt the Temptation of giving them that Title. Theſe Aſſertions are a perfect Novelty in Policy, as well as Divinity. Some late Writers have fully made out, That their Opinions are little more than of fifty years ſtanding. And it is as true, that they are the fruits of Ambition. Conſider whether all thoſe that ever undertook the defence of them, did not do it, to raiſe themſelves in the Church, and to be promoted to higher dignities than they could hope for from their merit. Truth never employs any thing for its own defence, but the light and evidence which are ſo connatural to it; but would to God the Authors and Defenders of theſe Opinions had never practiſed any violent means, to make their Party triumphant, by which both Church and State have equally ſuffered, and been both reduc'd to within two inches of their utter Ruine and Deſtruction.*

I confeſs theſe Gentlemen have endeavoured to delude the World, by alledging the Holy Scripture and Fathers, in favour of their Opinion. But herein they have behaved themſelves as the Hereticks do, in citing the Scripture and Tradition in defence of their Novelties; that is to ſay, wreſting them to their own Perdition, as St. Peter *ſaith; and making the Fathers ſpeak what beſt pleaſeth them, rendring them as pliable as the Sound of Bells, which (according to the Proverb) do tink as the Fool is pleaſed to think. And this is that which I undertake to juſtifie and make out, by my Reflections on this Matter.*

To perform this with ſome method, I ſhall firſt of all explain the Original of the Power of Kings. Secondly, I ſhall examine the Extent of that Power. And Thirdly, I ſhall conſider the Remedy that may be juſtly oppoſed againſt the Abuſe of it. And in the ſequel, ſhall make it my buſineſs to apply theſe general Matters to moſt of the Weſtern Kingdoms; and ſhall make it evident, That there is no pretext at all for the vaſt Pretenſions of thoſe, who ſet no bounds to the Power of Kings, and who believe that nothing but a Stoical and invincible Patience, can lawfully be oppoſed to their Injuſtice and Tyranny. And for as much as in examining theſe three Articles, I ſhall be obliged to oppoſe the Prejudices of ſome New Divines, I

think my ſelf bound to advertiſe the Reader, That it is not againſt their Character, but againſt their Opinions, that I ſet my ſelf; and that I do not in the leaſt pretend, by entring into the Liſts with them about a Political Queſtion, to derogate in the leaſt from their Authority, or to render their knowledg in Theological Queſtions ſuſpected. Tractent Fabrilia Fabri, *Let Smiths keep to their own Anvil; for by their diſregarding of this Proverb, they have wandred and loſt themſelves. They have cut the King lumping Pennyworths out of the Rights of the People, and imprudently made way for the Eſtabliſhing of that Tyranny, which would infallibly, in continuance, have deſtroyed their Religion. We muſt therefore, if it be poſſible, oblige theſe Gentlemen to permit others to enjoy their Rights, and then the World will be happy. I am not ignorant, that there be many among thoſe, who are dipt in this Opinion, that make great ſhew of Vertue and Piety: But foraſmuch as by this their Conduct they delude and hoodwink the People, it is but fitting to endeavour to prevent this ill effect, in defending the Truth. Shall we account the Rights of Truth the leſs certain, becauſe they have eſcaped the diſcerning of ſome honeſt and vertuous Men? Or the Deluſion the leſs dangerous, becauſe proceeding from thoſe that are ſuch? Let it be lawful for us then to bring back theſe Men from their Wandrings; and to convince them, that they ought no longer to defend Maxims, whoſe falſity is not more viſible, than it is prejudicial to the Intereſt of the Church and Community.*

RE-

REFLECTIONS
UPON THE
OPINIONS
OF SOME
MODERN DIVINES,
CONCERNING
The Nature of Government in General,
AND
That of ENGLAND in Particular.

CHAP. I.

Concerning the Original of Sovereign Power.

WE may assert, That the Rights of Sovereignty, to speak properly, have no Institution in the Law of Nature. A Father indeed has his Children in his power, and they are subject to him by a Natural Institution, as well because they have received their Life from him, which is the Foundation of all Good, as also for that they are beholden to him for their Education; which is another

ther Life, no leſs precious than the former. But though this Power were not included within the narrow Bounds of each particular Family, and though we ſhould ſuppoſe it extended to the taking away of the Life of Rebellious Children, yet certain it is, that the Paternal Power is not unbounded, with reſpect to Time; for as ſoon as a Man is married, and begins to form another Family, this Act emancipates him from the Paternal Authority, as Jeſus Chriſt ſuppoſes, when he ſaid to the bleſſed Virgin, *John* 2. 4. *Is not my hour come yet?* Which words *Gregor Nyſſen* explains thus, *An nondum venit mea hora, quæ præbet ætati ut imperet, & ſui ſit Juris?* Is not my hour come yet, which allows my Age to command, and leaves me at my own diſpoſe? But the caſe is not the ſame with Magiſtrates, whoſe Authority reacheth over a whole Society compoſed of ſeveral Families; for as they do not owe their Birth to the Magiſtrate, nor are obliged to him for their Education, as they are to their Parents, their Command cannot be founded on the Right of Nature, which ſubjects Children to their Parents.

Neither can we ſuppoſe that the Authority of Magiſtrates is bottom'd upon ſome Excellence they have by Nature above their Subjects. I own there be ſome Vertues and Talents which do ordinarily ſubmit the Spirits of ſuch as know them, to thoſe who are adorned therewith; and the higheſt degrees of Vertue and Wiſdom do naturally procure a veneration for thoſe that poſſeſs them. But who ſees not, that this is inſufficient to be the foundation of Civil Power. A Magiſtrate is not always diſtinguiſhed by theſe illuſtrious Talents and Qualifications, which ſo powerfully attract Veneration in particular. A Man may be very wiſe, and yet be ne'er the more obeyed by thoſe who don't underſtand the price of Wiſdom. He may be very valiant, but his Courage, being unaccompanied with Prudence, may render him contemptible in the Eyes of thoſe who apprehend his Temerity. It is plain then, that it is not this natural difference God hath put between Men, which is the ground of the Magiſtrates Authority. Indeed, the ſame is the caſe of Magiſtracy, as of the Ceremonial Law, which entred into the World becauſe of Sin; for certainly, if Men in their behaviour liv'd up to the Precepts of the Law of Nature, one Man would never invade what

what his Neighbour is poſſeſſed of, either by Inheritance, or by his own Induſtry: One Man would not defile the Bed of his Neighbour, or ſpill his Blood, to hinder the Oppoſition his Neighbour might make againſt his Enterpriſes. But becauſe Men are ſo prone to violate thoſe equitable Laws, to ſatisfie their Paſſions, and corrupt Inclinations, therefore is the Magiſtrates Authority become neceſſary.

And how great ſoever we may conceive this Authority to be, yet we muſt acknowledge, that God never inſtituted it till after the Deluge, as appears from *Gen.* 9. 6. We read in the Scripture, that *Cain*, when he had kill'd his Brother *Abel*, told God, That he feared that every one that met him, would kill him; but do not find, that he did in the leaſt apprehend, that his Father, as his Natural Sovereign, ſhould ſentence him for that Murther. This Impunity of *Cain* prov'd an encouragement to *Lamech*, as we ſee *Gen.* 4. 24. It ſeem'd indeed that the Authority of *Adam*, their common Father, together with that of the Patriarchs, might have been ſufficient to contain Men within the Bounds of their Duty, as well as the near Relation and Alliance that was between them. But this Paternal Authority, having by the ſpace of fifteen Ages been found incapable to reſtrain the licentiouſneſs of Men, and too weak to put a ſtop to their Debaucheries and Murthers, which at laſt drew down the Deluge upon them; we find that God afterwards inſtituted Magiſtracy, as a ſtronger Curb, to ſtop the impetuoſity of Mens exorbitant Paſſions. Moreover, Men being obliged to ſeparate themſelves from one another, in order to their peopling of the whole Earth, conſequently could not obſerve the ſame Principles of Communion which linked them together under the Patriarchs; wherefore it was Natural to ſubſtitute to that Patriarchal Authority, a Government more accommodated to the ſtate of Men in their different and diſperſed Habitations. Wherefore, becauſe Men had learnt from the Example of thoſe who were drowned by the Flood, to make ſmall account of the remonſtrances of their Parents, as well as of the Divine Denunciations, God thought fit to lay a more ſtrong Curb in their Mouths, and to reſtrain them, by making temporal Death the Reward of thoſe who would not be contain'd within the Bounds of their Duty by the fear of Eternal Sufferings,

Sufferings, in theſe words, *Whoſoever ſheddeth Man's Blood, by Man ſhall his Blood be ſhed.* This being the ſenſe and full import of this Declaration, according as the Jews unanimouſly agree. Now this granted, it is evident, that ſince Soveraign Power was inſtituted by God for a Curb to ſin, we muſt ſuppoſe that there be Laws, which ſerve for a foundation of Society, and for the conſervation of which Soveraignty was introduced at firſt: 'tis to make theſe Laws inviolable, and by puniſhments to reſtrain the unrulineſs and exhorbitance of the paſſions of Men, from tranſgreſſing of thoſe Laws, that the Sword at firſt was put into the Soveraign's Hand, and power given him to puniſh Criminals, or utterly to cut them off, as deſtructive to Society it ſelf.

From theſe two Principles, we very naturally deduce a third, *viz.* That the Character of a Soveraign, conſequently requires, That he who is clothed therewith, be one of the moſt perfect of the Society, that is one at the greateſt diſtance, from a diſpoſition to violate the Laws: for if he encourages others by his Example to violate them, and if by this means he ſubvert the foundations on which the Society ſubſiſts, directly croſſing the deſign and aim for which he was made a Soveraign; it is evident to a demonſtration, that he poſſeſſes the Soveraignty contrary to the intention of God, and the natural end of Society.

Nothing is more evident, than what I have here laid down; but it reſpects only the Society conſidered with regard to thoſe of whom it conſiſts: for if we look upon it with reſpect to thoſe who are ſtrangers, and who may deſtroy it, by invading it by force of Arms, it appears clearly that the Soveraign, being the defender of Juſtice at home, finds himſelf naturally obliged, to protect the Society by Force; ſo that together with Juſtice, he ought alſo to be qualified with the Character of Valiant, that he may oppoſe himſelf, with Succeſs, to all Enemies from abroad, and hinder them from deſtroying the Society.

And laſtly, the Character of *Wiſe* is particularly required in a Soveraign, for neither Juſtice, nor Valour, are of any great uſe, as long as they are ſeparate from Wiſdom and Prudence. Wiſdom is uſeful in Peace, and no leſs in time of War, is neceſſary with reſpect to Subjects as well as Enemies;

Enemies; she shines forth in Treaties, as well as Ruptures; she is of use in the prosecuting of injuries, as well as in the choice of means to obtain reparation; she finds out Expedients, against the greatest difficulties; and, in a word, we may say that without her, the Political Government is as a Body without a Soul, and a Ship without a Pilot, or Helm, which is abandoned to the Winds to be tossed at pleasure, and which at last perisheth infallibly by dashing it self against the first Rock it meets with.

If we attentively heed what hath been here advanced, we shall find that this has served as a common Principle, to all the different forms of Government, that have at any time obtained amongst Men. Indeed it is not easie to determine, what form of Government God instituted by that Law, mentioned in the Ninth of *Genesis*, whether he by those words determined the Authority to one or more Magistrates; because the word *Man*, is often taken collectively, to express many; so that the words are too general to decide this question: they conclude only that Murther is to be punished with Death. From whence we infer that the Magistrate has power to punish Murtherers and other Criminals, that destroy the Laws, whereby the Society subsists. It is manifest therefore that by reason and experience Men came to prefer one kind of Government before another, and variously to divide the Authority amongst many, according to the different acts to which it ought to be extended.

It seems that force was at first only made use of as a refuge for the weak, either to destroy the wild Beasts, that devoured their Cattle, and some times Men too; or to put a stop to the injustice of those, whose bodily strength inspired them with designs to rob the weaker sort of their possessions. And it is very probable, that forasmuch, as soon after, they observed that the force which protected them, might as well oppress the Society, for whose defence and protection it was armed, they found that Magistracy could not be lookt upon as an advantage, if it were not committed to the wise conduct of the most antient of the Society, who seem to have been the Judges, Magistrates and Counsellors of State, among all Governments, that were ever instituted with any prudence. Those

who considered the great parts that are necessary for the governing of a Society, preferred the way of chooſing their Governours. Thoſe who had experienced the ill effects of corrupt Elections by Bribes or other ways, followed the way of taking for their Governours, the Children of thoſe who had ruled them with Prudence. They who obſerved that one perſon is rarely capable of reſiſting and moderating ſo many different paſſions as may trouble a Society, thought good to divide the command amongſt many. Thoſe who took notice that this equality produced diſſenſions amongſt many Governors, placed the power in one perſon only. Thoſe that were aware that a ſingle perſon might overturn the Laws, and ſet up his will as the only rule of his conduct, found it neceſſary to preſerve to the People their ſhare in the Government. In a word, every Nation choſe that way they thought moſt ſure and proper to obtain the true ends of an happy Government in order to ſecure and preſerve the Society.

What I have ſaid in general, concerning the original of Soveraignty or Magiſtracy amongſt Men, ſhews that it cannot be denied, but that the inſtitution thereof is Divine, though God did not think fit to determine it to any certain form of Magiſtracy, whether of Monarchy, Ariſtocraſie or Democraſie, but left it to the Peoples free choice, to pitch upon that form they ſhould judge moſt convenient for them. But to procure a farther light to this matter, we muſt conſider the Judgment of Philoſophers and Divines concerning this point.

CHAP.

CHAP. II.

The different Opinions of Philoſophers and Divines concerning this matter.

IT may be ſaid, That there are three Opinions concerning the original of Soveraign Magiſtracy. *Cicero*, in his Books of the Commonwealth, was of Opinion, as appears from the definition he ſets down, That Governments were at firſt formed by an effect of pure neceſſity, which forced the weaker to ſeek for aid and ſuccour, from thoſe that were ſtronger. to ſecure themſelves from oppreſſion. This was alſo the Opinion of the famous Archbiſhop of *Burgos* in the Council of *Baſil. Faſcic. Fol.* 7. *St. Auguſt. de civit. D.*

The Body of Chriſtian Divines maintains that the Authority of the Sword was inſtituted by God, as may be ſeen *Gen.* 9. And it appears that whereas before the Deluge the Patriarchs were the only Maſters of their Families, which gave occaſion to abundance of Crimes, Juſtice not being executed with vigour enough, to put a ſtop to the courſe of exorbitances: as long as it was in the hands of a common Father, God was pleaſed to enact a Law whereby the Sword ſhould no longer be bound up to each head of a Family, but committed to one who ſhould be particularly charged therewith by the common conſent of the Society.

The Third Opinion is that of ſome new Divines, and other flatterers of the unbridled power of Princes, who maintain that Kings derive their Authority immediately from God, and not mediately from the conſent of the People. Thus *Peter de Marca* declares himſelf on this point, *de concord. lib.* 2. *c.* 2. *v.* 1, 2, 3. following therein the ſentiments of *Victoria* and *Duval*, the one a *Spaniard* and the other a *Frenchman*.

We need not wonder, if *Cicero* was miſtaken in the deciding of this matter, as being deſtitute of that light, which *Moſes* furniſheth Divines with. He determines this

point only as a natural Philoſopher. However we muſt obſerve that *Cicero* himſelf, and the moſt wiſe amongſt the Heathens, have ſufficiently given to underſtand, that they conceived Magiſtracy, without which it is impoſſible for a Society to ſubſiſt, to be of Divine Original, as well as all other good and profitable inſtitutions for the benefit of Mankind.

But not to inſiſt upon this, foraſmuch as all Divines agree that the original of Magiſtracy is from God, our buſineſs only is, to enquire, which is the truer Opinion, theirs who acknowledging the Divine inſtitution of Magiſtracy, maintain that this Authority is communicated to the Powers and Magiſtrates by the People, or of thoſe who pretend that God immediately communicates the ſame to the Magiſtrates that are inveſted therewith.

In order to the reſolving of which, before we paſs any further, we are to obſerve, *1ſt.* That the Body of Divines who defend the former of theſe Opinions, do agree, That the Authority of Magiſtrates is not to be accounted leſs Divine, becauſe it does not immediately come down from God. They own theſe Two things. *1ſt.* That God has ordered there ſhould be Sovereign Magiſtrates to regulate and govern Societies. *2ly.* That God having diveſted private Perſons of the right of doing themſelves Juſtice, in caſe of Offences given them, has ordained that the Magiſtrates ſhould have the Sword put into their Hands, by Capital and other Puniſhments, to ſtop the violence of thoſe who diſturb the Peace of the Society, and violate the Rules of Juſtice. And in this reſpect they acknowledge Magiſtracy, θεῖαν κτίσιν, a divine Settlement and Inſtitution.

Secondly, We are to obſerve, That when on the other hand they maintain, That the Power of the Magiſtrates is conferred by conſent of the People; in which reſpect they pretend, That St. *Peter* calls them Ἀνθρωπίνην κτίσιν, that doth not in the leaſt diminiſh the Authority of this Divine Inſtitution of Magiſtrates, which they refer ſolely and immediately to God.

Thirdly, That whatſoever Notion we may frame of the Power of Magiſtrates, whether we ſuppoſe it conferr'd upon them

them immediately by God, as *M. de Marca* pretends; or whether it be only mediately derived to them from God, by the intervening consent of the People, the thing is still the same; because it is evident, that this Power is not communicated to them, but for the subsistence of the Society, the Preservation whereof is the natural End of Government and Sovereignty.

Fourthly, That they do not oppose this Notion of the immediate Collation of the Sovereign Power by God, save only that they might express themselves more exactly, and distinguish the ordinary Governments of the World from the Kingdom of *Israel*. For the same Divines generally own, That the Institution of the Royal Power in *Israel*, was an immediate Act of God; but withal maintain, That the same cannot be said of other Sovereigns.

This laid down, I say, That nothing can be imagined more vain, than the second of these Opinions; and it is enough only to understand the terms which those Divines make use of to express their Sentiment, concerning the Original of Sovereign Magistrates in every State, and to consider the Proofs they alledge, to evidence the falseness of it; which Opinion accordingly I shall refute in the following Third Chapter.

CHAP.

CHAP. III.

That Sovereigns do not receive their Power immediately from God.

I Say then, That it is falſe, That Sovereigns receive their Power immediately from God. This is a Truth may be eaſily made out. Indeed, though the Power of Magiſtrates, of what ſort ſoever they be, be of Divine Inſtitution; which of all the preſent Sovereign Powers, whether Monarchs, Commonwealths, or any other Form of State, was inſtituted immediately by God? And who are the Perſons inveſted therewith, whom God has immediately called to that ſort of Power? All States are formed either by Conqueſt, or by Conſent of the People; which intervenes in the Election at the firſt Founding of a State, and which is renewed in every ſubſequent Election of Princes, or which is perpetuated in ſucceſſive Kingdoms. Was there any thing like to this in the advancement of *David* to the Royal Dignity?

Secondly, Is it not viſible, that in order to an immediate Eſtabliſhment from God, there is required an expreſs Revelation, ſuch as may be equivalent, at leaſt to a publick declaration of his Will, in favour of him whom he will ſet on the Throne? Thus things were carried with reſpect both to *Saul* and *David*; and who will affirm there is any King now in the World that has attain'd the Regal Power after this manner? If there be any, let them acquaint us with his Name, and the manner of God's revealing himſelf to the People, to make them know, that he immediately made choice of ſuch a Perſon to ſupply that Place.

Thirdly, Who ſees not, that the whole Diſcourſe of theſe Divines is nothing but a continual Equivocation? An Office is inſtituted immediately by God; wherefore all that are called by ordinary ways and methods, are immediately eſtabliſhed in it by God. I had as lief they ſhould tell me, That becauſe Marriage derives its firſt inſtitution and beginning

ning from God in the Person of *Adam* and *Eve*, whom God joyned to *Adam*, That therefore all Marriages are made immediately by God, and that he is the immediate Author of them. The one is every whit as reasonable as the other, and in the mean time the second is absolutely false. The Author of *Ecclesiasticus* saith, *Chap.* 7. 16. That the Art of Tilling the Ground was created by God: Doth it follow from thence, that God hath immediately setled such and such a one in the Calling of Husbandry.

Fourthly, If all Sovereign Magistrates desire their Institution immediately from God, how is it that we find so great a diversity in the Form of these Sovereign Governments. In some States we find Kings, in others Aristocrasies or Democrasies: Doth not this variety make it evident, that though God indeed have instituted Magistracy in general, yet he hath left it to the People to determin the Form of it, according to their Need, their Inclinations, and the Circumstances wherein they find themselves.

Fifthly, Doth it not most evidently appear, That if the Person were immediately instituted by God, it would be great folly for any Society to trouble themselves about enacting Laws for a Free Election at every Change, or to establish it by way of Succession in Monarchies? If God establisheth all Sovereign Magistrates immediately, to what purpose are all those Rules and Limitations, which by their variety afford us a sufficient demonstration, that this Institution is not an immediate effect of the Deity.

The Philosophers were fully of this Opinion, as we may see in the Books of *Aristotle*'s Policy; where he makes out, That the cause of the various sorts of Governments that are in the World, is nothing else but the different Judgments of the People, concerning the several sorts and manners of Government: Some of which have chosen one Form, to avoid the Inconveniencies they foresaw and apprehended from another; and others again being induced to embrace that Form, by the advantages they discerned in it, rather than another. This is a matter we ought to mind very carefully, that we may not put a ridiculous sense upon some Expressions of the Antients when they speak of Magistracy, as founded in the Law of Nature.

The

The Lawyers agree with the Philoſophers in this Point. *Ulpian* and *Juſtinian* both of them tell us, That the People of *Rome* beſtowed upon the Emperor *Auguſtus*, by the Royal Law, all the Right and Empire by which they were ſubjected unto that Emperor, *lib.* 1. *ff de Conſtit. Princip.* *Theophilus* explains what properly a Prince is, in theſe terms; *A Prince* (ſaith he) *is a Perſon who has received from the People the Power of Commanding and Ruling over them*, §. 6. de Jure Natur. & Gent.

The Canoniſts of the Church of *Rome* are no leſs expreſs in this Matter, than the Philoſophers and Lawyers. Cardinal *Bertrandi* lays it down for his Foundation, in his Treatiſe of the Civil and Eccleſiaſtical Power, *Bibliotheca Patrum*, which was copied by an Engliſh Monk, and is found among the Manuſcripts.

The Divines of that Communion make a Principle of it, as appears by the Diſcourſe of the Archbiſhop of *Burgos*, which I have before cited. And *Soto* ſaith, *lib.* 4. *de Juſt. & Jure*, *Regalem poteſtatem*, *Populi naturali lumine erexerunt*, That the People, by the Light of Nature eſtabliſhed Kingly Power.

M. de Marca owns, That the Canoniſts of his School do not favour his Opinion; but withal maintains, That they have fallen upon the Opinion contrary to his, that they might make a greater difference between the Civil and Eccleſiaſtical Power, than there is indeed; and to depreſs the Civil Power below the Eccleſiaſtical. He might alſo have alledged againſt the Divines of his School, That in this Queſtion they relied too much on the Judgment of *Ariſtotle*, who was their St. *Paul*, until the times of the Reformation. However, that which *M. de Marca* declares as his Judgment concerning this Matter, is too generally ſpoken: For we ſee *Marſilius* of *Padoua* following the ſame Principles, in his *Defenſorium Pacis*, though he undertook the Defence of the Emperor *Lewis* of *Bavaria*, againſt the Enterpriſes of the Pope; but however he pretends, That the Scripture and Antiquity furniſh us with quite other Notions about this Matter; which we ſhall next make it our buſineſs to enquire into.

CHAP.

CHAP. IV.

An Examination of the Arguments which are alledged for the Proof of this Opinion.

HE alledges only two places of Scripture, the one is that of St. *Paul*, *Rom.* 13. and the other is taken from the Sixth Chapter of the *Wisdom of Solomon*, which is an Apocryphal Book; but neither the one nor the other proves the thing he pretends.

It appears by the former of these Texts, That the Apostle endeavours to oppose the Opinion of those among the Jews, who pretended, That because the Monarchies or States of the Heathens had not an immediate Institution from God, as that of *Israel*, to which God had in a particular manner subjected the Jews, that therefore they were not obliged to submit themselves to the Authority of Heathen Magistrates. Wherefore he points them from that immediate Institution made in favour of the Kings of *Judea*, to that common and more ancient Institution of Magistracy among the Posterity of *Noah*, which *Moses* sets down, *Gen.* 9. as being sufficient to make the Authority of Magistrates respected, whatsoever Nation or Religion they might be of; whether they deriv'd their Power from the Consent of the People, or whether they had obtained it, by Robbing the lawful Sovereigns of their Authority, as the *Romans* had done, with respect to the Kings of *Judea*. In a word, the Apostle in that place intends nothing else but to authorize the Maxim of the *Essenians*, as it is related by *Josephus*, *lib.* 2. *de Bello Jud. cap.* 12. *Fidem omnibus servare, maxime verò principibus*, Ὀυ γὰρ δίχα Θεοῦ παραγίνεσθαί τινι τῷ ἄρχειν, to be faithful and true to all Men, but more especially to Princes; because the Sovereign Command never befel any one without the Divine Providence. These *Essenians* maintained against the Sect of the *Pharisees*, that

they might lawfully ſubmit themſelves to a Heathen Conqueror, without always foſtering a Spirit of Rebellion againſt him, and without diſputing or queſtioning his Authority, under pretext that the Jewiſh Government had been eſtabliſhed immediately by God. But doth this Text of St. *Paul* in the leaſt prove, that every Pagan Prince was immediately ſet upon the Throne by God?

The Paſſage quoted from the Sixth Chapter of the *Wiſdom of Solomon*, is nothing at all to their purpoſe; becauſe the Author of that Book addreſſes himſelf, in all appearance, to the Kings of *Judea*, who, as all agree, deriv'd their Acceſſion to the Throne immediately from God; ſo that it might well be ſaid to them, *Power is given you of the Lord, and Sovereignty from the Higheſt.*

True it is, That Jeſus Chriſt expreſſeth himſelf in words much to the ſame purpoſe, *John* 19. ſpeaking to *Pilate* the Governor of *Judea*; *Thou couldeſt have no power at all againſt me, except it were given thee from above.* But it is viſible that he ſpeaks this only with reſpect to the Order of the Divine Providence, which had ſuffered the Throne of *Judea* to be overthrown by the *Romans*; ſo that inſtead of her Natural Magiſtrates, ſhe was now ſubject to Strangers. The Empire of *Nimrod* was founded in the ſame manner with that of the *Romans*, and yet I ſcarce think any Man will pretend, that God committed the Sovereign Power to him, in the ſame manner that he did vouchſafe it to *David*.

True it is, That the Scripture gives *Cyrus* the King of *Perſia* the Title of the *Lord's Anointed*; which ſeems to import, as if God had in an immediate manner raiſed him to the Throne like *David*: But this is no due conſequence; for the Notion of the *Lord's Anointed*, ſignifies only his particular Deſtination of him, to be the Inſtrument of the *Jews* deliverance from their Captivity. I freely own, That a Divine Providence may ordinarily be obſerved in the Elevation of Kings; and that the ſame may be taken notice of, as intervening in a more eſpecial manner, in the raiſing of thoſe Kings whom God deſigns to make uſe of for the good of his Church, which is linked with the Civil Society: But I do not conceive that from thence it will follow, either that the acts of ordinary Providence, manifeſting

manifesting themselves upon occasions, are sufficient to make an immediate divine Institution of Princes, no more than other Events, wherein Providence intervenes, can properly be called *immediate* Effects of the Deity; nor that the extraordinary Acts of Divine Providence, as were those that respected *Cyrus*, ought to be alledged as an Argument in common Events.

The words we find in the Eighth Chapter of the *Proverbs*, are also commonly quoted to this purpose, *By me Kings Reign, and Princes decree Justice*; but it is manifest, that this is said with regard to Wisdom, of which he was speaking before, and which displays it self in the management of Humane Affairs, without intimating any immediate Act of the Deity.

Moreover we are carefully to observe, That though the Scriptures attribute to God the Institution of Magistrates, in which respect also they call them a Divine Institution, and ascribe to God the Exaltation of Princes in particular; yet they never express themselves but in a very general manner, as when they set forth to us the part God bears in all Events. Thus God is said to overturn Thrones, in like manner as he is said to erect them; he is said to settle Tyrants, as well as the most lawful Kings: All which Expressions relating to his Providence, which does or permits things by the intervening ministry of Second Causes, can have no influence upon the Judgments we are to make concerning the Authority of Princes, with regard to their Divine institution.

M. de Marca makes use of some Passages out of the Fathers, to confirm his Opinion. But, First, they infer nothing but what we are ready to grant, *viz.* That God having ordained Magistracy, those who are invested therewith, ought to be considered, as the Ministers of God; which is sufficient for a foundation of their Authority, without any necessity of supposing, that God immediately endows every King with the Royal Power, wherewith he is invested. This is the Opinion of *Theophilus* Bishop of *Antioch, ad Autol. Lib.* 1. where he saith, That the Prince has received in some sort from God the administration of the Government (τείνῳ τινὶ) which expression doth visibly respect a

mediate inſtitution, but doth not at all expreſs an immediate inſtitution, as *M. de Marca* conceives. Secondly, They diſtinctly lay down, That Magiſtracy is a humane inſtitution, as St. *Peter* qualifies it, becauſe all Magiſtrates, and Kings themſelves are ordained, and eſtabliſhed by Men; as *Occumenius* explains that place, 1 *Pet.* 1. 2.

St. *Irenæus* ſays no more, *lib.* 5. *contr. Hær.* C. 24. He refutes the Opinion of the *Gnoſticks*, who would have Magiſtrates to be an inſtitution of the Devil, and he makes it appear, that both the Old and New Teſtament confirm, That Magiſtrates are one of the means which Providence has judged neceſſary to put a ſtop to the Current of Wickedneſs and Crimes, which had deluged the Heathen World, whom the fear of God alone was not able to keep within the bounds of Juſtice. To which purpoſe he ſaith, *Cujus juſſu homines naſcuntur, hujus juſſu & Reges inſtituuntur*; by whoſe command Men are born, by his command Kings are ordained. Neither doth *Epiphanius* advance any thing more than this. *Hæreſi* 40. *contra Archontic.*

Tertullian expreſſeth himſelf to the ſame purpoſe, in his *Apologet. cap.* 30. *Inde eſt Imperator, unde & homo antequam Imperator; inde poteſtas illi, unde Spiritus.* Thence is the Emperor, from whence Man is before he was Emperor, thence he has his power from whence he has his Breath.

St. *Chryſoſtom* exactly follows their footſteps, as well as St. *Iſidore* Biſhop of *Peluſium*, *Lib.* 2. *Epiſt.* 206. Indeed how could St. *Chryſoſtom* teach any other Doctrine, who in his 23. *Hom.* upon the Epiſtle to the *Rom.* plainly aſſerts, That Jeſus Chriſt never gave his Laws with deſign to overturn the received forms of Government, οὐκ ἐπ' ἀναιρέσει τῆς κειμένης πολιτείας· and expreſly denies that thoſe words in the 13. Chap. of the Epiſtle to the *Romans*; *for there is no power but what is of God*, muſt be underſtood concerning Government in general, and not of thoſe who are inveſted therewith. *Quid dicis, Omnis ergo Princeps à Deo conſtitutus eſt? Iſtud, inquit, non dico. Neque enim de quovis Principe ſermo mihi nunc eſt, ſed de ipſa re. Quod enim principatus ſunt, quod iſti quidem imperant, iſti vero ſubjecti ſunt, quodque non ſimpliciter ac temere cuncta feruntur . . . divinæ ſapientiæ*

pientiæ opus esse dicit. Propterea non dicit, Non enim Princeps est nisi à Deo, sed de re ipsa disserit dicens; Non enim Potestas est nisi à Deo. What do you say then that every Prince is constituted by God? No I don't say so, for I am not speaking here of every particular Prince, but of the thing it self. For that there are Principalities, that some rule, and others obey, and that all things are not carried rashly and without order; this the Apostle declares to be an effect of the Divine Wisdom. Wherefore also he does not say, *for there is no Prince but who is of God*, but, *for there is no power but what is of God.*

St. *Augustin de Civitate Dei, Lib.* 5. *cap.* 21. holds forth no other Doctrine. *Qui Augusto Imperium dedit, ipse & Neroni, qui Vespasianis, vel Patri vel filio, Suavissimis Imperatoribus, ipse & Domitiano crudelissimo.* He that bestow'd the Imperial Dignity upon *Augustus*, gave it also to *Nero*, and the same who advanced the *Vespasians*, Father and Son, most beneficent Emperours, exalted also the most cruel *Domitian.* All which expressions do evidently refer to nothing else, but the order established by the Divine Providence, without, in the least, deciding the question in Controversie.

Neither do I find that the Bishops of *France* entertain'd any different Opinions concerning this matter, when they represented to *Lewis* the good, the greatness and importance of his Dignity, and the necessity that lay upon him, to afford Justice to all his Subjects, because he owed his Soveraign Dignity to God himself and his Predecessors. *Quapropter*, say they, *quisquis cæteris mortalibus, temporaliter imperat, non ab hominibus, sed à Deo, commissum sibi regnum credat. Multi namque munere Divino, multi etiam Dei permissu regnant. Wherefore whosoever temporally rules over other Men, ought to think his Kingdom committed to him, not by Men but by God. For many do reign by a Divine Grant, and many only by Divine Permission.* Which words were used by them, only as a motive, to oblige that Emperour, not to look upon the Royal Dignity as an Inheritance or Possession, but as a charge or office instituted by God, of the administration whereof he was to give an account to God. *Concil. Paris. Lib.* 2. *cap.* 5. *Anno* 829. The Fathers also of the Council of *Troslý*, simply declare, That the Royal Dignity

Dignity was instituted by God, when the Apostle said, *Be subject to the King as chief*, which would be a strange Conclusion, if he had not had an eye to the institution of the Office, and not to the immediate institution or consecration of the Person.

I know it has been customary for Emperors and Kings, to look upon themselves as chosen of God, Crowned of God, *&c.* which hath given occasion to some Painters and Gravers to represent them, as receiving their Crowns from Heaven. I am not ignorant also that the Emperour *Lewis*, of *Bavaria*, maintains, That the Imperial Power and Authority, is immediately from God, and not from the Pope; but his first expression respects only the order of Providence, and the second the Pope's pretensions, who maintained, That Emperors held the Empire as a Fief, whereof the Pope was the Lord Paramount.

After all, though these Gentlemen, who attribute to every Soveraign Magistrate and to every King, the power which they enjoy, as immediately conferred upon them by God, think by this means to lay a more sure foundation for the veneration which the People owe to the Royal Power, it is very evident that they advance little by this their Opinion, if it be true, that this power, though we should suppose it granted immediately by God, must be limited by certain Laws, and that the People have right to impose them upon them, when they elevate them to that Dignity.

CHAP.

CHAP. V.

Whether the Power of Soveraigns be absolute and unlimited.

IT is commonly conceived that there are two sorts of Government, the one Absolute, and the other Limited: Absolute Government is supposed to be that, wherein the Governor doth so absolutely enjoy all the Authority necessary for the subsistence of the Society, that none share with him in it, so that he exerciseth it according to his good pleasure. In such a Government as this, the Prince can make Laws, and again revoke, or dispence with them. He can settle inferiour Magistrates, and discharge or remove them again at pleasure, and repeal their Acts or Decrees. He can declare War to the Enemies of the State, and make Peace with them. He can save the Lives of Criminals, or take them away: all which he may do without any one having any right to contradict or oppose him. Neither is there any thing contrary to the nature of Government, in this Absolute Power: for since it is necessary to make Laws for the good of the State, according as there is need, to nominate Magistrates, and to remove them; to examine the Judgments of inferiour Courts, and repeal them, if they be unjust: it is a thing indifferent to the State, by whom these things are done, so they be but done in such a manner, as to answer the natural end of Government, which is the good of the Society.

But we must take heed of conceiving any such Absolute Power inherent in any Sovereigns whatsoever, whereby they may lawfully frustrate and overthrow the ends of Government. For how absolute so ever a Prince may be conceived to be, yet can he not be so in all respects: for first he is subject to the Divine Laws, as well as the meanest of his Subjects. Secondly, He is subject to the Laws that are founded

founded on the Right of Nations. Thirdly, He is obnoxious to the fundamental Laws of the State, which he governs. Fourthly, he lies under an obligation of following the Laws of the Government, committed to his charge, so far as to endeavour to obtain the ends thereof, by procuring the happiness of the Society.

But if any Man conceives a Government absolute in all respects, and whereof the Sovereigns are not bound up by the four Tyes abovesaid, he imagines an illegal and monstrous Government; neither can there be any such, but the Tyrannical, which is no Government at all. For seeing that Tyranny is diametrically opposite to the natural end and aim of Government, I do not see how it can be ranked with lawful Governments, there being as much absurdity in supposing it such, as to suppose an unjust and impossible Law, to be a good and true Law, because published by one, who has the Authority to do it.

I cannot find that ever there was any Empire or Authority Absolute in all respects, as is pretended. Those very Soveraigns which are conceived to be absolute to this degree, as those of the *Medes* and *Persians*, had notwithstanding some irrevocable and inviolable Laws, which were fundamental to that State; as appears from the Book of *Daniel*. *Aristotle* seems to speak of these sorts of Government. *Polit. Lib.* 3. 210. where he distinguishes them from a Tyrannical Government, forasmuch as they were established upon some fundamental Laws or Customes. And I very much question, whether any such example can be produced, no not in the Empire of the Turks, which has been always lookt upon as the most Absolute and Despotical Government, where the Soveraigns have attributed to themselves so vast and unbounded a Power, and actually enjoy'd the same.

I know it is commonly apprehended, that Conquerors, such as *Nimrod*, and many others, did in so absolute a manner possess themselves of all the Rights of Sovereignty, that there was nothing left to their Subjects of what Rank or Order soever. But to declare my sense of this matter, we are to observe, First, That Conquerors had no other aim, but to rob other Sovereigns of their Power, without changing

any

any thing in the Government of the State they had invaded. Secondly, That those Invasions having no other foundation, but a Conquest by force of Arms and Violence, contrary to the Law of Nature, which made *Seneca* call this sort of Conquerors *Magnos & furiosos Latrones*, great and furious Robbers; these Conquerors easily perceived, it was necessary for them, to trim and rectifie this their unjust Power, if they would have their Authority to be lasting: whereupon they accordingly took care to moderate it, by Conventions and Laws, to the Justice of which the People gave their consent. Thirdly, That these Conventions and these Laws, were to speak truly and properly, the lawful Title of all the Authority their Subjects owned in them. Fourthly, That this consent of the Subjects, always supposeth, that the ends of Government be preserved, except we should perswade our selves, that there be Subjects Fools enough to consent to a Government, whose aim should not be levelled at their Advantage and Prosperity.

'Tis horribly to delude ones self, to found the Idea of an Absolute Government in all respects, amongst Men, upon a notion of the absolute Empire God has over all his Creatures: for is it not evident that this Divine Empire, supposeth an immoveable Justice, and infinite wisdom, and a most tender love for his Creatures, which are the Essential Attributes of God, and which cannot be found in any mortal Man? But some, it may be, will tell me, That I contradict the Stile of Holy Scripture, in denying that Tyrants can lawfully enjoy so absolute a Power, when the Prophets tell us, concerning some Kings, That God gave them such absolute Power: as we find it exprest in particular concerning *Nebuchadnezzar*, *Dan.* 5. 18, 19. But the answer to this Objection is obvious, First, That which ought to be referred to God's Permission only, is not to be attributed to a concession of the Deity, which latter is only sufficient to establish a lawful Right; for otherwise, we must say, That God had given a just right to the false Prophets to deceive *Ahab*, by their lying Oracles. If this be not the case, let any Man answer me these Two Questions, First, Whether *Nebuchadnezzar* sinned, in using this absolute Power, which he had, without

any consent or concurrence of his Subjects, in killing them without cause, and contrary to the Laws of Justice and Equity? Secondly, Whether God could justly punish *Nebuchadnezzar*, as he did, for making use of this Tyrannical Power, which he had suffered him to invade. *Nemini injuriam facit qui jure suo utitur.* He that makes use of his own Right injures no body, is a Maxim of Law.

Secondly, Otherwise we should be fain, to suppose, That those, who at any times have raised themselves against Tyrants, had been great Criminals, whereas the Holy Scripture doth set them forth for Heroes, such as *Ehud*, who have undertaken to rid the World of their unjust oppression, by killing them.

Possibly it may be further objected to me, That by these assertions I oppose the Doctrine of the Old and New Testament, which equally command all both Jews and Christians to submit themselves to the Powers that had conquered them, and particularly to the Power of the Romans, who pretended to be absolute over all their Subjects. But it will be found that there is nothing at all of any contradiction between that which I maintain, and what is here objected. The Jews being conquered by *Nebuchadnezzar*, were become the Slaves of that Monarch, and owed him all manner of obedience, which *Bondmen* do to him who has saved their Lives, when it was in his power to kill them. And for the rest, the Scripture does not determine, whether the Tyrannical power they attributed to themselves, be lawful or no. Sure it is, that an unlawful and Tyrannical Sovereign may rule legally in several respects, in which case, it imports little, to those who are subject to it, contrary to their wills, whether the Power, under which they are, be lawful in all respects or not.

Let this therefore be laid down for a certain truth, That every lawful power is necessarily limited by Laws, That these Laws are the foundation of the Government; from which the Sovereigns cannot depart, without overturning the Society, for the subsistence of which, the Political Government was at first instituted by God.

But

But this is not the only kind of limitation, which may be obſerved in the Powers that govern Societies. As God has not preſcribed any ſort of Government, in preference to others, the Wiſdom of Men have diverſly limited the way and conſtitution thereof. Moſt People finding by Experience, That Monarchy, though it have many advantages before other Governments, is apt to degenerate to Arbitrary Power, thought it fitting that the greateſt Lords of the Community, ſhould concur with the King in the exerciſe of his Authority: others again were of Opinion, That the People ought to have the chiefeſt ſhare in the Government, foraſmuch as the main end of the Government is to make them happy. Theſe different apprehenſions of Men, have eſtabliſhed the ſeveral forms of Government, the aim of thoſe, who contrived thoſe different forms, being only to prevent oppreſſion and injuſtice, which directly croſs the end of Government.

CHAP. V.

Concerning the Extent of the Power of Sovereigns.

WHat I have here ſet down concerning the Nature of Governments, the moſt Abſolute of which are not unbounded by the Laws of God, by the Laws which conſtitute the Right of Nations, by the fundamental Laws of the State, and more particularly by Bounds preſcribed to the Authority of Sovereigns: ſufficiently ſhews what is the juſt extent of Sovereign Power, and how far Men are obliged to yield Obedience to it. Indeed, foraſmuch as Authority and Obedience are relative terms, which reciprocally eſtabliſh or overthrow one another, it is eaſie to judge, That Obedience cannot be due to Authority, but in proportion to the extent of the Authority.

Paternal Authority, in the manner as God had eſtabliſhed it under the Law, could not inflict Death upon a Son, but in the preſence of the Judges, and upon the hearing of Witneſſes. The Authority of a Judge cannot be diſcharged, but in the due Forms of Judicature, and according to the Laws; he cannot puniſh a Criminal extrajudiciouſly, notwithſtanding he might have abſolute knowledge of his Offence.

This laid down, and there is nothing more evident, it will be eaſie to determin, how far the Obedience of Subjects is engaged in the various ſorts of Government under which they reſort.

As

As to those Governments or Powers, which have no other Law but their own Will, whether at first they were raised by way of Conquest, which seems to reduce Subjects to the condition of Slaves; or whether from lawful Governments they have by degrees degenerated into Tyranny by the Injustice of Sovereigns, we ought naturally to distinguish between the use these Powers make of their Authority; and their abusing of it, by rendring their Authority unlawful, and extending it beyond its just limits. The Captain of a company of High-way-men, that is a Father, may exact of his Son the Obedience which a Child owes his Father; but his quality of Captain of High-way-men, does not give him any right to command his Son to rob or murther: And so far is the Son from being obliged to obey such kind of Commands, that he becomes Criminal by obeying them.

It is evident then, That in these sorts of Governments, as long as the Prince enacts Laws conformable to the fundamental Laws of the State, and that he behaves himself as a Father of his Country, there lies a necessity upon the People of obeying him; and this necessity is founded upon their Relation to the Authority, which is just and legal, with respect to its Function and Exercise.

But we must judge otherwise, when the Question is of unjust Laws which the Power enacts for the Oppression of his Subjects: For then there seems no further necessity of obeying, to lye upon the Subjects, than what results from a desire of avoiding their own destruction, which depends on the Pleasure of the Power that oppresseth them, which cannot settle a lawful Right on Tyrants, other than such as a Master may have over his Slave or Bondman, according to the Laws of Servitude.

And as to Governments which are bounded by fundamental Laws, it is apparent, That the Powers having no Authority at all, but according to the Laws whereby they are

are eſtabliſhed, their Subjects are ſet free from obeying them, as ſoon as they tranſgreſs thoſe Laws. If a King, who has no Power to make Laws, will of his alone Authority undertake to publiſh any, without the concurrence of thoſe who ſhare with him in the Legiſlative Power, none of his Subjects are obliged to obey him. If a King, who has no right to lay any Taxes on his People, undertake to charge them with Impoſitions, the People are not obliged to pay ought of them. If the King, who has no Power to declare War, doth do it without conſent of the State, the People are not obliged to go to War.

Nothing is more viſible, than that Obedience may yet more juſtly be refuſed, when Sovereigns undertake to overthrow the State, in diſpenſing with all the Laws, and in attempting to rule by an Arbitrary Power: whereas the fundamental Laws of the State, which are the Bond of the Society, do only allow them a limited Power.

Hitherto our New Divines agree with others, That Subjects are diſpenſed with from giving Obedience to an Illegal Power. But foraſmuch as a State muſt neceſſarily periſh, when ſubject to a Power that is reſolved to overthrow all; the Queſtion is, What may be expedient and lawful for People to do in this caſe?

There are but Two means imaginable to remedy ſo urging an Extremity: The one is to reſiſt the Power that abuſeth his Authority, thereby to oblige him, for time to come, to keep himſelf within the Bounds that are ſet him.

The other is to reject him altogether, and to rid themſelves of him, when there appears no probability of reducing him to the terms of Juſtice, and to the Rules of his Inſtitution.

'Tis againſt theſe Two Articles our New Divines oppoſe themſelves might and main. They conceive on the

the one hand, that though the People be not bound to obey unjuſt Commands, yet they never can have any Right to reſiſt the Sovereign Power; no, not when they make uſe of Violence, to oblige the People to execute their wicked Deſigns. This is the Doctrine of *Non-reſiſtance* or *Paſſive Obedience*, which has been ſo much agitated of late years.

And as to the other Article, they maintain the People have yet leſs right to caſt off their Princes, or rid themſelves of them, how high ſoever the Abuſes may be they commit, in exceeding the bounds of their Authority, and how Tyrannical or Arbitrary ſoever their Government may be: That Sovereign Powers depend on none but God, ſo that the People cannot, without invading the Rights of the Deity, undertake to depoſe or puniſh them.

Theſe are the Points we are to conſider at preſent. I begin with *Non-Reſiſtance*, otherwiſe called *Paſſive-Obedience*.

CHAP.

CHAP. VI.

Concerning Non-reſiſtance.

THis Doctrine of *Non-reſiſtance*, ſeems to me to be founded upon Three Suppoſitions, which may be eaſily convinc'd of Falſity.

Firſt, Theſe Gentlemen forge to themſelves an *Idea* of Sovereign Powers, and aſcribe certain Rights to them, which they afterwards look upon as Eſſential to Government, and conſequently as Rights inſeparable from Sovereignty, whatſoever ſort of Sovereignty it may be. Which Eſſential Rights, according to their account, are theſe: *Firſt*, Not to be accountable to any but God. *Secondly*, To have the whole diſpoſal of the Sword. *Thirdly*, To be exempt from all Coercive Power whatſoever. *Fourthly*, Not to be liable to ſuffer Reſiſtance, on any pretext. *Fifthly*, to be inveſted with the Legiſlative Power. They conceive, that without theſe Rights a Prince is ſtill but a Subject; and conſequently, that they are all Eſſential to Sovereign Power, and therefore inſeparable from it. Upon theſe Premiſes they with eaſe eſtabliſh this Concluſion, That foraſmuch as the Right of not being liable to Reſiſtance, is inſeparably annexed to Sovereignty, the People can never of Right reſiſt their Princes on any pretext whatſoever.

If we object againſt this their Scheme, That the Rights they attribute to Sovereignty, are ſuch as cannot agree with a Sovereignty limited by Laws, which allow of Reſiſtance, becauſe there can be no Authority but by Law, and according to Law: Whence it follows, That it is lawful to Reſiſt him who has no Authority.

They

They suppose in the *Second* place, That all Limitations whatsoever, do only respect the Exercise of the Sovereign Power, without being able in the least to derogate from the Essentials of Sovereignty; and that after all, these Limitations are only the Effects of the consent of Sovereigns; which proceeding only from their good will, are revocable, *ipso facto*, as soon as it pleaseth them so to do.

The *Third* Supposition is this: They pretend that the Holy Scripture holds to us such a Power inherent in Sovereigns, as can never be lawfully resisted; and that it exhorts People to submit themselves so absolutely to it, that they never undertake to oppose themselves against its unlawful Effects otherwise than by Patience, when they are convinced in Conscience, of the Injustice of the Laws and Commands enjoyned.

'Tis an easie matter to overthrow the *First* of these Suppositions.

First, I would fain know who has given these Gentlemen the Power of determining, as they do, what is Essential to Sovereignty. Do they derive these their Notions from Revelation, or from Reason, which is common to all Men? If they say they derive the definition they give us of Sovereignty from Revelation, they will do well to point us to the places of Scripture where this Notion is set down.

If they draw it from Reason, then I cannot but wonder that so many Statesmen and Writers of Civil Matters have fail'd of stumbling on the same Notion; and it seems to me an inextricable thing, that so many Nations should agree to reject what they approve, and to approve what they reject.

To say here, That they draw this definition from the *Idea* of Sovereignty, which loseth its nature when divested of these Characters, shews they are willing either to abuse themselves or others by a pitiful Equivocation. The word *Sovereign* imports a relation to Inferiors; and as the relation has a certain foundation, so it is likewise evident, that it hath its bounds set proportionable to its foundation.

Where there is no Authority, neither is there any foundation for Obedience: Now there is no Authority but in proportion to the Laws which eſtabliſh the Authority; wherefore it inconteſtably follows, There can be no Authority where the Law is ſo far from allowing any, that it oppoſes it.

It will never ceaſe to be true, That the Authority is Sovereign, though it be not ſo in all reſpects. The Conſuls of *Rome* were Sovereign Magiſtrates, though the People had Power to oppoſe themſelves againſt their Authority, when they abuſed the Power they were intruſted with, for the good of the Commonwealth. In *France* they give their Parliaments the Name of *Sovereign Courts*, though their Sentence be not always irrevocable.

The *Second* Suppoſition is only founded upon this Notion, That Conquerors having invaded the Liberty and Privileges of the People, were afterwards ſo kind, to reſtore ſome part thereof to them again by their Conceſſions; but that theſe *Acts of Grace* do not at all diveſt them of the Right of Acting whenever it ſhall pleaſe them, as if their Power was altogether Unlimited and Arbitrary. This Notion is much the ſame with that of the Partiſans of the Court of *Rome*, who maintain, That the Liberties of the *Gallican* Church are only Acts of Grace and Favour granted to that Church; whereas the *French* pretend, That they are common Rights and Franchiſes which their Anceſtors have conſtantly maintained, according to what *P. Pithou* declares concerning them.

But indeed, to ſpeak truly, this Suppoſition cannot be admitted with reſpect to conquered States, at leaſt for the moſt part. Ordinarily a Conqueſt is made upon the Power that governs the State; ſo that the State only changes its Maſter, the fundamental Laws of the Land receiving no Alteration from this Change. Of this we have an Inſtance in *England*, when King *William* conquered it, who at his Coronation ſware to keep the Laws of St. *Edward*; and his Succeſſors were fain to ſwear the ſame. Now one of theſe Laws (*c.* 15. *T.* 1. *Spelm. p.* 622.) imports, That a Prince that abuſeth the Power he is intruſted with, does loſe the Title of King: From whence it follows, That his Subjects need

need not own or obey him, and that consequently it is lawful to resist him.

To maintain, That a King, whose Power is limited by the fundamental Laws of a State, and which he is invested with upon that condition, when at his Coronation he swears to the People, is indeed obliged to keep the said Oath, for fear of God; but that he is not at all engaged by this his Oath to the People, is rather a piece of Raillery, than Reasoning. What, Does not the Oath the People swear to the King oblige them in Allegiance to him? and how can we then suppose that the reciprocal Oath of the King should not as well oblige him to his People? Surely, if we well weigh the case, 'tis impossible but we must discern a palpable falsity in this Opinion of *Passive Obedience*, in the way these Gentlemen propose it.

First, They grant a Right unto Sovereignty which is diametrically opposite to the end of Sovereignty, according to the Divine Destination. For the good of the Society, and its Subsistence, was God's End in instituting of the Sovereign Power; whereas by their Hypothesis the Sovereignty may become an instrument of the utter ruin of the Society, whensoever it shall please the Sovereign; his Subjects in the mean time having no means to attain the said End, or being in any condition to hinder their being deprived of it.

Secondly, They suppose, That God in allowing a lawful Right to Sovereigns, has subjected the People to a necessity of groaning under an Illegal Right, and which God has never bestowed upon them; and for the Usurpation of which he will condemn those who do arrogate the same to themselves; which is much to the same purpose, as if I should say, That because God has established Judges, he has thereby obliged the People to suffer Robbery, when the Judges shall think fit to turn Robbers.

Thirdly, They make the condition of a Civil Society more unhappy, than was the condition of Families in the state of Nature, before Societies were formed. For the liberty of defending one's self is permitted to every one by Nature;

but after the Society is once formed, it would follow, That the whole Society would be obliged, by a Principle of Conſcience, to ſuffer their Throats to be cut by a Prince of the humour of a *Nero* or a *Caligula*.

Fourthly, They turn to meer Chymera's and Viſions, whatſoever the wiſdom of Men have been able to find out to make States happy, by ſecuring them againſt Tyranny. I ſpeak of Laws and Oaths; the Laws are the bands and cement of the Society, and the foundation, as well as the meaſure of the Obedience we owe to Princes. The Oaths are the Seal of the Contract, by which the Subjects are obliged to obey them, upon condition that they govern according to Law. But all this is to no purpoſe, and is of no uſe to the People, as ſoon as the Tyrant thinks fit to overturn the Laws, and to make a Scoff at his Oaths.

Forasmuch as the *Third* Suppoſition, *viz.* That the Scripture maintains *Non-reſiſtance*, with regard to Sovereigns, whether they act according to or againſt Law, is of greater importance, it will be convenient to examine the ſame more heedfully, and the rather becauſe Men of Abilities and Learning have endeavoured ſtrongly to aſſert it, and to make it paſs current with others, and that with all their might.

CHAP.

CHAP. VII.

That the Scripture doth not assert the point of Non-resistance.

FOrasmuch as the Doctrine of *Non-resistance* directly thwarts a natural Principle, to wit, that of our own preservation, and that of the Society whereof we are Members; we may easily judge, That in case the Scripture does assert it, we must suppose it has done it, with all possible clearness and distinction; but we do not find any such thing.

I find but one place in the Old Testament, which can be wrested to this purpose with any probability; 'tis the Description of the behaviour of a King, set down 1 *Sam.* 8. & 10. where the vulgar Translation interprets *Mispath*, by the Word *Right*, *hoc est Jus Regis*. But I am astonished how any could be mistaken in this case. For First, It appears that God in that place gives us the Description of a Tyrant, and not of a King: for indeed we find nothing like to it in the Description he gives us of a King by *Moses*, *Deut.* 17. Which appears to be so, because *Samuel* held forth this Looking-glass to them, to make them quit their demand of having a King set over them, as the rest of the Nations about them. Secondly, It is apparent that what he saith of their crying to the Lord, when oppressed by their King, would have been most ridiculous, supposing the King to have these Rights from God, and by his Concession. When *Moses* tells the Jews, *That they should cry unto the Lord, when they should be oppressed by their Neighbours, waging War against them, because of their forsaking of the Lord*; Does he not plainly suppose, That they

they would do this to obtain his Protection againſt the injuſtice of thoſe Tyrants? And can any one be ſuppoſed Fool enough to imagine, that according to God's intention it was unlawful for the *Iſraelites* to defend themſelves againſt the *Moabites*, *Philiſtims* and other Nations that oppreſſed them. Thirdly, It is evident that this ſuppoſed, God could not in Juſtice puniſh a Tyrant; or if he did, it would be for making uſe of a Right, himſelf had conferred upon him. This reaſon made *R. Juda* to oppoſe *R. Joſe*, as *Kimki* obſerves upon this Text. The ſame is alſo acknowledged by the wiſeſt of Divines. *Marchat in horto Paſtorum*, *Lib.* 3. *Tr.* 4. *Lect.* 13. explains himſelf thus, *Hoc eſt jus Regis*, *idem eſt ac ſi diceret*, *Hæc eſt conſuetudo Regum*: This is the Right of a King, is the ſame as if he had ſaid, This is the Cuſtom of a King, *Jus Regum*, *Jus non legitimum ſed uſurpatum. Eſtius. Samuel* ſpeaks there not of a lawful Right of Kings, but of an uſurped and arrogated Right, and the ſame is the Opinion of *Cornel. à Lapid.* and the *Janſeniſts* of *Port Royal.*

After all that has been ſaid, it is natural to obſerve, That foraſmuch as all the ſeveral kinds of Government, are no leſs founded on Divine Authority, than the Kingly, yet according to this Hypotheſis, none of them would be inveſted with this Right ſo fatal to Society, but Kings only, which certainly is the worſt Argument they could have lighted on, to recommend a Government, which God by his own inſtitution, has conſtituted a true Tyranny.

The ſecond place is that of St. *Paul*, *Rom.* 13. where the Apoſtle forbids reſiſting of the Powers, for fear we ſhould reſiſt the Ordinance of God. But we are to take notice, that the Apoſtle in that place does not in the leaſt touch this Queſtion, Whether it be lawful to reſiſt the Powers, when they endeavour to overthrow the Government.

Firſt, He conſiders the Powers in the lawful uſe of their Authority, puniſhing the Evil, and protecting the Good. Now it is ridiculous to ſuppoſe, that the ſame Priviledge that appertains to him, who makes a lawful uſe of his

Authority,

Authority, is every whit as applicable to him who has loſt his Title by the abuſe of his Power. *Rex*, ſaith St. *Iſidore*, *à rectè agendo dicitur*; *ſi enim piè & juſtè & miſericorditer agit, merito Rex appellatur*; *ſi his caruerit, non Rex, ſed Tyrannus eſt.* A King has his name from acting right and well; for if he acts piouſly, juſtly and mercifully, he is deſervedly called a King; but if he want theſe qualifications, he is no King, but a Tyrant. *Addit.* 2. *ad capit. Carol Magn. cap.* 21.

Secondly, This would ſuppoſe the Powers that act under Sovereigns to be every whit as irreſiſtible as the Sovereigns themſelves; which is an extravagant poſition in the ſenſe of all Modern Divines. Beſides we are to obſerve that Sovereigns with their Power, are only the Organical chiefs of the Society; the true head or chief is the Principality with its Members, which are the integral parts of it. This is the ſame that was acknowledged by *Charles Moulin*, the Prince of French Lawyers, and the great defender of the Kings of *France* and their Authority.

Upon this account it is that the People have right to proſecute the miſdemeanours of the King's Attornies and Miniſters, and to puniſh them; which would be ſtrangely ridiculous, if the State were not perſwaded, that all the Power they have, is a power received from the State, thô the King have the Power to elect and raiſe them to thoſe Employments.

It is apparent therefore, That theſe words of St. *Paul*, only have an eye to the repugnance the Chriſtian Jews had, to ſubmit themſelves to the Dominion of Heathens. This was the Opinion of the *Phariſees*, who tempted Jeſus Chriſt, upon occaſion of the Tribute which the Emperor levied in *Judea*; *Joſephus* ſhews that the *Eſſenians* oppoſed them in this point, and St. *Paul* here takes the Part of the *Eſſenians*. And indeed we do'nt find that the Chriſtians did any way oppoſe the Decree of the Senate, when they declared *Nero*, The Enemy of all Mankind. We find alſo that the Chriſtians of *Tertullian*'s time, and thoſe that followed after, did very well agree with the Sentiment of Heathen Authors, about the Juſtice of the People's or Senate's reſiſtance.

resistance against such Tyrants; as is apparent from *Lactantius de Mortibus Persecutorum*, and the like may be seen in *Eusebius*, *Orosius*, and in St. *Augustine de Civit. Dei*. But I can say more than this, *viz.* That the Scripture is so far from teaching the Doctrine of *Non-resistance* to an unjust Power, and that violates the Laws, that she represents to us contrary Examples, with commendation, and sufficiently intimates that we rather sin in not resisting. For don't we see *David* taking up Arms to defend himself against *Saul*? Don't we see him offering *Abishi* to fight for him against *Saul*, notwithstanding he was his Father-in Law? Don't we see the Ten Tribes opposing themselves against *Rehoboam*, upon his declaring for Tyranny and Arbitrary Government?

Let us take the pains heedfully to consider the carriage of the High-Priest, and his Collegues, when King *Uzziah* presumed to exercise the Functions of the Priesthood in offering Incense, and it will plainly appear, they did not think it unlawful to resist Sovereign Authority, when it goes beyond its bounds, 2 *Chron.* 26. 17. *Azariah* the High-Priest follows him with fourscore Priests, all valiant men, drives him out of the Temple; and afterwards he is deprived of his Government, and his Son placed on his Throne. It cannot be alledged by these Gentlemen, that this happened to him because of his Leprosie, because they suppose that a Prince cannot be resisted, whatever his behaviour may be, or devested of the right of Governing, for any reason whatsoever.

After all, Let us consider how severely God punished *Israel*, for the sin of *Saul*, in breaking the Troth plighted to the *Gibeonites*, and we shall find they were enveloped in the punishment of his sin, because they had not opposed themselves against *Saul's* breach of Faith. And we make the same Reflection, about the punishment God inflicted on the People, for their consenting to *David's* numbring of them, which God had forbid. And why so, but because they did not oppose themselves against this enterprize of *David*, as they ought to have done? We

do

do not find the People engaged in the punishment of *David*'s Adultery with *Bathsheba*, because indeed the People had no share in that sin. *We see the inhabitants of Libna rejecting Joram, because he had forsaken the Lord his God*, 2 Chron. 21. 10.

Lastly, I desire that those, who talk so much of *Passive Obedience*, would be pleased attentively to consider the behaviour of the *Maccabees*, when they shut the Gates of *Modin* against the Envoys of *Antiochus*, and afterwards took up Arms for the defence of their Liberty and Religion, 1 *Mac.* 2. As also that of *Matthias*, who shut the Gates of *Modin*, in exhorting his Children to continue in their resistance; and does the same at the hour of his Death, without believing that he was guilty of any sin in taking up Arms; and his Children follow his Exhortations, with an extraordinary Courage and Piety.

I own that the Books which have preserved this History are not Canonical, no more than *Josephus*, who has followed them. But I must observe,

First, That it sufficiently appears, what the Opinion of the Jewish Church was in this point; who still retains an Abridgment of these Books, in her Books of Prayers, highly praising the *Maccabees* for their Virtue and Piety.

Secondly, That the Christian Church has allowed the publick reading of them, notwithstanding they were not Canonical, and that with great esteem too; which would have been extravagant and impious, in case the resistance of the *Maccabees* had been a true Rebellion.

Thirdly, I have still more to say, *viz.* That the Apostle St. *Paul*, in the Eleventh of the *Hebrews*, makes an Encomium of the *Maccabees*, and approves the War they undertook. This is that which is acknowledged by the

learned *Therndike* in his *Right of the Church*, Page 306. by St. *Chryſoſtome Hom.* 27. *in Epiſt. ad Hebr.* and by *Haymon* Biſhop of *Halbarſtad*, as alſo by *Menochius* and *Eſtius* in their Commentaries.

Fourthly, That *Lucifer de Cagliari* in his Book, *De non parcendo in Deum delinquentibus* (a Book approved by St *Athanaſius*, who calls this *Lucifer* a New *Elias*, Page 1068.) openly ſets down, not only that he believed it was lawful to reſiſt Kings, under the Old Teſtament, but alſo to put them to Death, in caſe of Idolatry, which he maintains the *Arrians* were guilty of. *Si veteris Teſtamenti temporibus vixiſſet (Conſtantius Imperator) gladio potuiſſet extingui, & defuncti oſſa igne abſumpta fuiſſent.* If *Conſtantius* the Emperour had lived in the times of the Old Teſtament, he might have been killed with the Sword, or at leaſt his Bones after his Death would have been burnt.

CHAP.

CHAP. VIII.

Whether the States can deprive Sovereigns of their Authority when they abuſe it.

THEY who maintain it is not in the Power of the Subject, juſtly to reſiſt the Authority that is once eſtabliſhed, though it abuſe the Power committed to it. believe alſo conſequently, That it is not lawful for a State to reject their Sovereign, nor to deprive him of his Authority, though he make uſe of it, to overthrow the Government: but foraſmuch as the former Opinion is wholly contrary to all good Senſe, and Juſtice; the leſſer cannot be leſs ſo. I own it is unjuſt to deprive a Sovereign of the Power he enjoys, as long as he uſeth it lawfully: and in this regard it is, we muſt not attempt any thing againſt the Authority of Kings, or other Sovereign Magiſtrates. I acknowledge alſo that the People may not riſe up againſt their Superiors, for the firſt Fault they commit, in matter of Government, Kings being no more infallible than other Men; we cannot with juſtice expect from them, that they ſhould commit no faults at all in their managing of the Government.

It is alſo evident enough that the People muſt not oppoſe themſelves againſt every thing that ſeems to have ſome air of ſeverity or hard uſage in the Government; as St. *Paul* alſo orders Servants to ſuffer patiently the hard uſage of a too ſevere Maſter. Good ſenſe alone is ſufficient to inform People, That they muſt not expoſe the publick Tranquillity to danger, for ſome ſeverity,

or for ſome intereſt which reſpects only ſome particular perſons. And indeed with this reſpect we may ſay that private perſons are obliged to ſacrifice their particular intereſt, to the publick Good and Peace. But there is a vaſt difference between a King, that governs juſtly, or that falls into ſome error, which he is willing to retract and amend upon a remonſtrance from his Subjects; and a Tyrant who overturns the Laws of the State, and the end of the Government deſignedly and of deliberate purpoſe. It would be a ſtrange deluſion for us to attribute to a Tyrant the Priviledges of a King; or to ſuppoſe, as otherwiſe we muſt, That there is no means to diſtinguiſh them; both which Extreams are equally ridiculous. For,

Firſt, All wiſe Men that ever were, have declared, That it is eaſie to know the difference between a King and a Tyrant. *Ariſtotle* gives us an exact *Idea* of a Tyrant, *Polit. lib.* 4. *cap.* 10. *Pol.* 6. *Hiſt. lib.* 5. gives us the Character of a Tyrant, in oppoſition to that of a King. *Syneſius* alſo gives us a very lively Portraiture of one *de Reigno*. *Iſidorus* gives us this deſcription of Tyrants, *Origin*, *lib.* 9. *cap.* 3. *Jam poſtea in uſum accidit Tyrannos vocari peſſimos atque improbos Reges luxurioſæ Dominationis cupiditatem, & crudeliſſimam Dominationem in Populis exercentes*; Now it is become cuſtomary to call bad and wicked Kings *Tyrants*, who are ambitious of Arbitrary Power, and oppreſs their Subjects by a moſt cruel Dominion. *A King* (ſaith the Scholiaſt of *Ariſtophanes*) *differs from a Tyrant, in that a King poſſeſſeth his Kingdom*, certis ſumens conditionibus, ὅτι μετὰ λαῶν πέφυκε, *receiving it on certain conditions*; *whereas a Tyrant enters upon it by force and violence*. *Bartholus*, among the Lawyers, gives us a Deſcription of a Tyrant, and the Characters wherewith he ſets him forth are infinitely different from thoſe that ought to be in every King. Wherefore we cannot imagin, that the difference between a King and a Tyrant ſhould be none at all, or imperceptible.

Secondly,

Secondly, Heathens as well as Christians, Papists as well as Protestants equally agree, That it is lawful for a State to rid themselves of a Tyrant, by wholly casting him off.

This is a constant Maxim among Heathens, whereof we may see the Proofs in *Thucydides*, *lib.*—— in *Pausanias in Attic.* in *Polyb. lib* 2. in *Cicero*, *lib.* 3. *de Offic. & Orat. pro Milone*, *& lib.* 2. *de Invent.* in *Seneca*, *lib.* 2. *de Benefic. cap.* 20 in *Seneca* the Tragedian, in *Hercule Furente*; in *Pliny*, *lib.* 34. *cap.* 4. in *Valerius Maximus*, *lib.* 2. *cap.* 10. in *Plutarch. in vita Buti*, and in *Themistius Orat.* 14.

The *Jews* have reduced this Maxim into practice, as we may see in the History of the *Maccabees*, who took up Arms against the Authority of *Antiochus Epiphanes*.

As for Christians, we find this Sentiment confirmed by *Lucifer de Cagliari*, and approved by St. *Athanasius*. We find that St. *Austin* * maintains against *Adimant*, *cap* 17. That though *David* did not kill *Saul*, yet he had right to do it. *Brentius* agrees with this Judgment of St. *Austin*. And *Sozomenus*, *lib.* 6. proves, That if the *Roman* Soldier, who was suspected to have killed *Julian* the *Apostate*, had done it indeed, that he had done it justly and of right. We find the same thing asserted by *Englishmen*, as by *Joannes Sarisbur. Polycrat. de nug. curial*, *lib.* 7. *cap.* 17, 18, 19; by *Matthew Paris ad An.* 1233, in the business of the Bishop of *Winchester*.

* Augustlibro contra Adim. c. 17. *Nec tamen hoc fecerunt justi homines, nisi auctoritate divina, ne quis arbitretur passim sibi esse permissum necare quem velit, aut judicio persequi aut pœnis quibuslibet afficere. Aliquando autem aperte ponitur in scripturis ipsa divina authoritas, aliquando autem occultatur, ut & manifestis lector instruatur, & exerceatur obscuris. Certè inimicum & persecutorem suum, nimis ingratum & nimis infestum Saul Regem accepit David in potestatem ut ei faceret quod vellet, & elegit parere potius quam occidere. Non enim erat jussus occidere, sed neque prohibitus, imo etiam divinitus audierat se impune facere quicquid vellet inimico, & tamen tantam potestatem ad mansuetudinem contulit. Dicatur mihi quem timuit, cum interficere noluit? Nec hominem possumus dicere timuisse quem acceperat in potestatem, nec Deum qui dederat. Ubi ergo nec difficultas fuit occidendi nec timor, dilectio profuit inimico. Ecce David ille bellator implevit præceptum Christi quod accepimus, ut diligamus inimicos.*

The

The Church of *Rome* has always been of this Opinion, before the Reformation, as appears by the Judgement of *Thomas Aquinas* 22. *qu.* 24. *art.* 2. of *Aureolus* and all the Schoolmen. In a word, we can affirm, That this was received as an indubitable Opinion, in the Council of *Basil*, who laid it down as a Principle, whereupon they grounded their right of Deposing the Pope.

This has always been the Opinion of Popish Lawyers and Canonists, as we may see in *L. decerminus de Sacrosanct. Eccles.* in *Bartholus*, in *tractatu de Tyrannia*: in *Paris de Puteo*: in *Syndic.* where he puts the Question, Whether it be lawful to kill a King that is a Tyrant. In *Andreas Iserus institut. quæ sint Regalia.* In *Mar. Laudun.* in *tractatu de Princip.* §. 3. in *Angelus de Clavasio* in *Summa voce, Seditio. Quæst. ultima*, in St. *Antonin.* in *summa* 2. *par. tit.* 4. *c.* 8. §. 1.

Neither do the Protestants differ from them in this point, as is evident from the Writings of *Zuinglius*, *Luther*, *Calvin*, *Pareus*, *Bilson*, *Abbot*, &c. *Conringius* lays it down as an indubitable truth, *ad Lampadium de Imp. Rom.* 119.

And the Papists since the Reformation are of the same judgement, as will appear, if we consult *Greger. de Valentia*, *Tit.* 3. *disp.* 5. *qu.* 6. *Tolet. in summa l.* 5. *c.* 8. *Mariana de Rege Lib.* 1. *Cap.* 3. *&* 6. *Lessius de Jure & Justitia Lib.* 2. *cap.* 9. *dub.* 4. *Molina tr.* 3. *disp.* 6. *de Justitia & jure. Eman. Sa in Aphor. verbo Tyranns. Suarez. in defens. fidei, lib.* 6. *cap.* 4.

Neither let any one imagine, That this is only a Doctrine of the Jesuites: We may see the contrary, in those who have written concerning the Deposition of *Henry* the Third, and who have maintained the Justice of that Deposition. And we may affirm, That among so

ſo many *French* Authors, who have writ againſt *Baronius* and *Bellarmine*, who attribute the Depoſing of *Childeric* to Pope *Zachary*, and the placing *Pepin* on the Throne in his ſtead, there is ſcarce any to be found, who whileſt they diſpute the Pope's Right to Depoſe Kings, do not acknowledge, That it is a Right inherent in the States of the Kingdom.

And indeed to weigh the thing in it ſelf, it is evident, That when a Prince is become the Enemy of his People, and endeavours to deſtroy them, he thereby loſeth the Right of Governing them. If we take the Sword out of the hand of a Madman, that he may do no hurt with it; who doubts but we have the ſame right to take away that Power from a Prince, which he makes uſe of, as if he were a Madman.

The Hiſtory of *Portugal* fully ſets forth to us the Judgement of that Nation, with reſpect to King *Alphonſus* III. This Prince minding nothing but hunting, his Council repreſented to him, That if he did not apply himſelf to the buſineſs of State, they would Depoſe him, and place another on the Thone. What would not they have ſaid, think we, had they ſeen him Murthering his Subjects in cold Blood, as their laſt King, whom they baniſhed, becauſe of a like madneſs.

I acknowledge, That the Commonwealth has put its rights into the hands of the Prince, by which ſhe ſeems to have deprived her ſelf of that Power. But it is a ſtrange and uncouth imagination to ſuppoſe, that a State ſhould deprive it ſelf of the right of reſiſting injuſtice and violence, which is a right, that Nature communicates to every Creature together with its Being. Beſides it is certain, That if a State be limited by Laws, and that the People are the Authors of them; ſo that they ſhare and exerciſe the Sovereign Power, in this caſe they are naturally ſuppoſed to poſſeſs and hold the Authority,

Authority, which is neceſſary to preſerves the Right that belongs to them.

Let Men Philoſophiſe as long as they pleaſe, they ſhall never be able to make out, either that a Prince can pretend to a Power of deſtroying the Society, without any danger of being called to an account for it; or that a People can ever be eſteemed to have granted him a Right, tending to their own Ruine and Deſtruction.

But ſome may ſay, That the Title of a King, ought to ſecure a Tyrant againſt any reſiſtance, he might be liable to from his Subjects; even as the name of a Father is a Title that puts Children out of a Condition of ſetting themſelves againſt him, whoſe cruelty they have experience of. But beſides that, there is a great deal of difference between theſe two Titles, which is the ground of the difference there is between the Subjects and a King, and the Children and a Father; is it not notorious, and practiſed every day, that a Father who is become the Enemy of his Children, is deprived of the adminiſtration of his Goods, and of the diſpoſal of his Children; which practice being grounded on the Law of Nature, doth not in the leaſt violate the order of the Society.

Moreover it is certain that a Title, how venerable ſo ever it may be, cannot ſecure him that bears it, from the reſiſtance of thoſe that are oppreſſed by him. Let us conceive a Phyſician, that has a deſign to Poiſon his Patient; the Title of a Phyſician which has induced his Patient to commit the care of his Health to his truſt, can it hinder the Patient from proſecuting him as a Murtherer, in caſe he reſolv'd to take away his Patients Life, inſtead of contributing to his Cure.

We

We know that Divines look upon the Government of the Church, as a Government instituted by God, and immediately instituted by him: and yet who knows not, that they have deposed the Pope, Bishops and Popish Priests, by withdrawing themselves from their Dominion, and that upon this Ground, that tho there be something lawful in their Ministry, yet they oppose themselves to the end of their Ministry, by reason of the Tyranny which they exercised over their Consciences.

But some may imagine, that because God has not expresly given this Right to People to cast off their Kings when turn'd Tyrants, and that he has thought it sufficient to recommend Obedience to them, he has thereby authorized all their unjust Proceedings and Violence, without leaving any means to the People of opposing themselves against their Oppression by deposing them. This is a meer Delusion; and to see through it, we need only consider God's Silence concerning the irregular comportment of the High Priest, who notwithstanding was subject to the same Punishments, as were the meanest Levites, in case of his violating the Rules of his Institution, and transgressing the Laws which God had given to all the People of *Israel*, and to the Priests in particular. Indeed, it was not needful that God should prescribe any such thing to the People, because Nature alone is sufficient to teach People aright they are possessed of, by giving their Consent to the Elevation of the Powers that govern them. In a word, I say, that God had sufficiently intimated to the Israelites, that they could not lawfully be oppressed, in that he had expresly forbid their Kings to heap up vast Riches, or to multiply the Number of their Cavalry, which the Kings could not do without violating the Law of God, and without drawing upon themselves the Resistance and Opposition of their Subjects; as *Josephus* very well infers, who maintains, *Lib.* 4. *cap.* 8. "That the People ought of Du-"ty to oppose themselves against a Prince, who transgress'd the "Bounds God had prescribed to him in the 17*th* of *Deutero-*"*nomy*.

But this Point leads us insensibly to consider more particularly, what kind of Royalty it was, that obtained amongst the Jews, which deserves carefully to be examined. This I intend next to consider, and afterwards shall proceed to take a view what was the Law of Royalty among the *Romans*; and shall

make it appear, that the Kingdoms of *Europe*, which have been formed out of the Ruins of the *Roman* Empire, have neither followed the one nor the other of these Models, tho some Divines have asserted it without respect to Truth.

CHAP. IX.

Concerning Regal Dignity, and the Rights belonging to it amongst the Jews.

I Am to make out four Things in order to the clearing of the Character of Royalty, which obtain'd amongst the Jews.

The first is, to enquire, whether it was immediately establish-ed by God?

2*ly*, To shew, that it was limited according to the Description we have of it in the 17*th* of *Deuteronomy*.

3*ly*, To evince solidly, that all that *Samuel* declared concerning the Right of Kings, was only a Prophecy about the Tyranny of Kings, and not the Right of Royalty.

4*ly*, To make it appear, that supposing that of *Samuel*'s, to be a Description of a Lawful Right, yet that particular Settlement could not be of any Consequence to those Estates that had another Institution.

For the first, I say, that the Institution of some Magistrates amongst the Jews, was by express and immediate Revelation from God: *Moses* his Ministry and Authority was established and confirmed by miraculous Signs and Tokens, as appears *Exod.* 3. And for the Judges of the People of *Israel*, as may be seen in the 18*th* Chapter of the same Book; But we find nothing like this, in the establishment of the Kingly Authority amongst them. For we do not find that God, in the 17*th* Chapter of *Deuteronomy*, enjoins the People to establish a King over them, as the Jews themselves believe; but only that he foresaw the disorderly Inclinations of the People, who in Time to come would demand a King to rule over them, in conformity to those of their Neighbour Nations. A demonstrative Proof of what I say is, because that God himself having declared himself solemnly

ſolemnly to be their King, in giving them Laws, in leading their Armies, *&c.* they could not reject him without committing a great Sin. This is that which *Gideon* was very ſenſible of, as appears by his abſolute refuſal of the Royal Dignity. The ſame thing may alſo be gathered from the words of *Samuel*, 1 *Sam.* 8. and of God himſelf.

I own indeed, that when the People ſhewed themſelves obſtinately reſolv'd to have a King, there happened ſomething of an immediate deſignation of *Saul* to that Dignity, as may be ſeen 1 *Sam.* 10. for the Election was made by caſting of Lots in the preſence of *Samuel*, to ſhew that the appointment of *Saul* was immediately from God. But for all this it continues a great Truth, That the eſtabliſhment of the Royal Power in *Iſrael* was an Act of the People, and not an immediate Act of the Deity. And we ought to give the more heed to what was immediate in the Inſtitution, becauſe it is the Foundation of many particular Expreſſions we find in Scripture; when it is ſaid of the Judges of *Iſrael*, Deut. 1. 17. That their Judgment was God's Judgment; That they are Gods, *Exod.* 21. 16. & 22. 8, 9, 28. *Pſal.* 82. 1. *John* 10. 35. That God is with them in their Judgment, 1 *Chron.* 19. 6. All thoſe Expreſſions refer to their immediate Divine Inſtitution. When the Scripture, ſpeaking of the Kings of *Judea*, ſaith, That *Solomon ſat upon the Throne of God*, 1 *Chron.* 29. 23. that is to ſay, that God had placed him on the Throne of *Iſrael*, which God himſelf was poſſeſt of, till their demanding a King of *Samuel*, 2 Chron. 9. 8. When it calls them the *Kings of God*, 1 Sam. . *Pſal.* 18. 50. and *his Anointed Ones*, 2 *Sam.* 22. 51. which Title is given to *Saul*, as well as *David* and *Joſiah*; all thoſe Expreſſions reſpect God's Eſtabliſhment of Kings, after that the People had earneſtly and obſtinately demanded to be govern'd by their Miniſtry.

As to the ſecond Head which reſpects the Laws that God preſcribes to the Jews, to regulate the Choice, and the Conduct of their future Kings, ſet down by *Moſes*, in *Deut.* 17. *v.* 14, 15, 16, 17, 18, 19, 20.

We may therein obſerve theſe two things.

1*ſt.* That God ſuppoſeth, that foraſmuch as they would ſome time after ſet up a King over them, they would alſo ſuppoſe it lawful for them, to preſcribe to the Royal Power, the Form

and Rules which their Neighbour-Nations, amongſt themſelves, had ſet to that Form of Government.

2*ly*, That God leaving to the People the natural Right of limiting the Royalty amongſt themſelves, according to their own liking and fancy, or for giving it more ſcope and liberty, as their Neighbours had done, only thought good to preſcribe to them theſe Rules and Limitations. 1. God limits their choice as to the Perſon of a King, that he muſt be one choſen by himſelf. 2. They might not chooſe a Stranger. 3. He do's not allow the King to multiply Horſes; 4. Nor to lead back the People to *Egypt*; 5. Nor to have great ſtore of Wives; 6. Nor to heap up vaſt Riches. 7. He enjoyns him to ſtudy the Law of God, and have it always with him to obſerve and keep it. And, 8. To do Juſtice equally to all without diſtinction.

Theſe are the Laws which *Joſephus* hath compendiouſly ſet down, *Lib.* 4. *cap.* 8. *p.* 123, after *Philo*, in his Treatiſe, concerning *the Creation of the Prince.*

Now it is natural and obvious, to conclude from all this; 1. That God doth not in that place proſcribe a plat-form of a Monarchy for the Government of the Jews; but only ſuppoſeth that the Jews, being deſirous of Monarchy, would be apt to borrow the Model of it from the Neighbour-Kingdoms. 2. That in preſcribing ſome Rules concerning the choice and behaviour of a King, he endeavors to prevent the State of *Iſrael* from falling into the Inconveniences, into which their Neighbour-Nations had caſt themſelves, by allowing their Kings, or at leaſt ſuffering them to take too great a Power and Authority, whether in Matters of State or Religion. 3. That he ſuppoſeth, that the People ought to oblige the King to obſerve theſe Laws of God, and that they might oppoſe themſelves to Princes, who at any time ſhould have the boldneſs to violate them; as *Joſephus* expreſſeth himſelf in the place quoted before. 4. That he allows the People of *Iſrael* the ſame Rights to oppoſe themſelves againſt the unjuſt Enterprizes of their Princes, turn'd Tyrants, which other Nations were poſſeſt of againſt their Princes, when they abuſed their Authority: the Reaſon why People deſire a King, being, that he may Judg and Govern them, not that he ſhould Deſtroy them by playing the Tyrant.

It is of importance to make theſe Obſervations, becauſe it appears that in all this God did ſo far accommodate himſelf to the

the Design of the Jews, that he never pretended to carry his Laws any farther: for we see he does not speak to them concerning the Manner how they ought to behave themselves, when they should be attak'd or subjugated by Foreign Powers, as supposing that common sense would be sufficient to instruct them, that in those Cases they were to follow the Example of other Nations, who bore patiently the Yoke of the Prince that conquer'd them.

These things thus laid down, it clearly appears, that God set Bounds to the Royal Power, long before he established any King in *Israel*, and that the Jews could not but believe, that Kings had another Law set them than that of their own Wills.

Indeed we see, 1*st*, That this Institution did not at all derogate from the Rights of the People, to choose their own Kings, under certain Conditions, and by a form of Treaty, Compact, or Capitulation. We find that the Election of *Jephtha*, Judg. 11. 10. clearly supposeth this, as likewise afterward the same may be seen in the Election of *Saul*, *David* and *Solomon*, 1 *Chron.* 28. 8. and 1 *Chron.* 29. 24. We find that *Ishbosheth* was brought into the Camp by *Abner*, only to show him to the People, that they might consent to the choice of him, 2 *Kings* 2. 9.

2*ly*, Though this Institution seem to be immediate, yet did it not at all hinder or prejudg the Peoples Right of making Treaties and Capitulations with their Prince, and consequently of rejecting them, when at any time they should invade or violate the said Rights and Capitulations. And of this we have an illustrious Example in the Sons of *Samuel*, whose ill administration gave the Jews an occasion to demand a King, by which means *Samuel* himself was, as we may say, obliged to renounce his Power as Judg, which notwithstanding he had received immediately from God himself.

3*ly*, How immediate soever the Kings of *Juda* may have been established by God, yet they never had the Character of an Arbitrary and unbounded Power, as is suppos'd by those, who would infer, that because Monarchy was instituted by God, the Power of him that is invested with it cannot be justly limited, neither can, for any Misdemeanour whatsoever, be deposed.

To make it more sensible and evident, we need only take notice of what the Scripture tells us in several places.

1*st*. They

1*ſt.* They could not alienate the Lands and Countries that belonged to the State, to any Strangers, neither could they take them from their Subjects by way of Truck or Exchange, as appears from that Hiſtory of *Naboth*, 1 *Kings* 21.

2*ly.* They could not invade the Sacerdotal Functions, as is apparent from the Hiſtory of *Uzzia*, who was boldly and courageouſly reſiſted by the High Prieſt *Azaria* and his Colleagues, 2 Chron. 26. 18.

3. They could not conſtrain the Levites to go to War; that Tribe being excepted from all the reſt, who were ſubject to that Service, as *Abulenſis* owns it, 1 *Kings* 9. 22.

4. They could impoſe no Tributes but in caſe of Neceſſity, and with the conſent of the People; and thoſe who have undertaken to do otherwiſe, have been cenſured therefore by the Prophet, *Mic.* 3. 1. Not to mention, that the exceſſive Tributes *Solomon* impoſed on the People, were the cauſe of the ten Tribes ſhaking off *Rehoboam*'s Yoke, 1 *Kings* 12. 3.

4*ly.* I ſay that though God had ſeemed, to fix the Royal Dignity to one Family, to wit, that of *David*, yet was it not ſo bound up, that the Succeſſion muſt always paſs from the Father to the eldeſt Son, and not to the younger. Thus we ſee that *Solomon* was preferred to *Adonijah* by *David*, by the conſent of the People. Thus *Rehoboam* deſigned to ſettle the Succeſſion upon *Abijah* the Son of *Maachah*, as thinking him moſt fit for Government, though he had elder Brothers, 2 *Chron.* 11. 22. *Jehoſhaphat* on the contrary preferred *Jehoram* to the Succeſſion before all his other Sons, becauſe he was his Firſt-born, 2 *Chron.* 21. 3.

All which evidently proves that both Kings and People, ſuppoſed themſelves to have right, from the Divine Graunt or Conceſſion for the Eſtabliſhment of Kings, to regulate the Rights of Royalty, and the Queſtions depending thereon, according to the Maxims of Political Prudence, and the Rights of Nations.

Neither do we find that *Samuel* grounds his Diſcourſe on any other Principles, or that he ſuppoſes that Kings ought to be inveſted with a boundleſs Power, as ſome imprudently do imagine. See in what manner he expreſſeth himſelf, to diſwade the Jews from their importunate Demand to have him ſettle a King over them, 1 *Sam.* 8. 1, 2, 3, 4, 5, to the end. *And it came to paſs, that when* Samuel *was old, that he made his Sons*

Judges

Judges over Iſrael. *But his Sons walked not in his ways, but turned aſide after Lucre, and took Bribes, and preverted Judgment. Then all the Elders of* Iſrael *aſſembled themſelves together, and came to* Samuel *unto* Ramah, *and ſaid unto him, Behold, thou art old, and thy Sons walk not in thy ways; now therefore make us a King to judg us like other Nations. But the thing diſpleaſed* Samuel, *when they ſaid, Give us a King to judg us. And* Samuel *prayed unto the Lord, and the Lord ſaid unto* Samuel, *Hearken unto the Voice of the People, in all that they ſay unto thee; for they have not rejected thee, but they have rejected me, that I ſhould not reign over them. According to all the Works which they have done, ſince the day that I brought them up out of* Egypt, *even unto this day, wherewith they have forſaken me, and ſerved other Gods, ſo do they alſo unto thee. Now therefore hearken unto their Voice, howbeit proteſt ſolemnly unto them, and ſhew to them the manner of the King that ſhall reign over them. And* Samuel *told all the Words of the Lord unto the People that asked of him a King; and he ſaid, This will be the manner of the King that ſhall reign over you, he will take your Sons, and appoint them for himſelf, for his Chariots, and to be his Horſemen, and ſome ſhall run before his Chariot; and he will appoint him Captains over thouſands, and Captains over Fifities, and will ſet them to ear his Ground, and to reap his Harveſt, and to make his Inſtruments of War, and Inſtruments of his Chariots; and he will take your Daughters to be his Confectioners, and to be his Cooks and Bakers. And he will take your Fields and your Vine-yards, and your Olive-Yards, even the beſt of them, and give them to his Servants. And he will take the tenth of your Seed, and of your Vineyards, to beſtow it upon his Officers and his Servants. And he will take your Men-Servants and your Maid-Servants, and the goodlieſt of your young Men, and your Aſſes, and put them to his Work. He will take the tenth of your Sheep, and ye ſhall be his Servants: And ye ſhall cry out in that Day becauſe of your King, which ye ſhall have choſen you, and the Lord will not hear you in that Day. Nevertheleſs the People refuſed to obey the Voice of* Samuel; *and they ſaid, Nay, but we will have a King over us, that we alſo may be like all the Nations, and that our King may judg us, and go out before us, and fight our Battels.* And Samuel *heard all the Words of the People, and he rehearſed them in the Ears of the Lord. And the Lord ſaid unto* Samuel, *Hearken unto their Voice, and make them a King: and* Samuel *ſaid unto the Men of* Iſrael, *Go ye every Man unto his City.*

'Tis

'Tis obvious to observe from this account: 1*st*. That the Injustice and Miscarriage of *Samuel*'s Sons was the cause why the Jews demanded a King to be set over them.

2*ly*. That their Demand is couch'd in those terms, that make it evident, they desired to be governed after the manner of their Neighbour-Nations. 3*ly*. That this their Demand was displeasing to *Samuel*. 4*ly*. That God look'd upon it as a Contempt of himself, and a casting off of his Authority, for the Reasons before alledged. 5*ly*. That God strictly enjoyns *Samuel* to protest and declare unto them, how they must expect to be treated by the Kings that should reign over them. 6*ly*. That *Samuel* in this his Declaration delineates to them the compleat Pourtraiture of a Tyrant rather than of a King, to affright the People from the Demand they had made; and that as a Prophet he foretells the things should happen to them under the Government of their Kings. 7*ly*. That he represents to them the Miseries annex'd to Royalty, as their Bondage in *Egypt*, and the several other Servitudes, which had forced them to cry unto God, but denounces to them, that God, to punish them for this their Rebellion against him, and their Contempt of his Administration, would not hear them. 8*ly*. That the People dazled with the Lustre of Royalty, and the Advantages they thence promised to themselves; in time of War, notwithstanding this Remonstrance, persevered in their Demand. 9*ly*. That finally therefore God commands *Samuel* to give way to their Request, and to set a King over them according to their Desire.

This in short is the sense, which *Josephus* gives of this Hist-
Antiq. lib. c. 4. ry. From whence it is evident, that the Synagogue never believed that God had granted to the Kings of *Judea*, any of those Tyrannical Rights, which some would appropriate to Kings from these Words, *Hoc est jus Regis*.

Josephus makes out, that what is said, 1 *Sam.* 10. 25. that *Samuel* wrote the Right (or rather the Manners and Behaviour) of a King *in a Book, and laid it up before the Lord*, was done by him for this end, that the People for time to come might know, that he, as a Prophet, had, in this his description of the Manners
Ibid. cap. 5. of a King, foretold them all the Calamities and Miseries that would overtake them under a Monarchy, chang'd into Tyranny, that thereby they might be induc'd to Acknowledge their unthank-

unthankfulneſs towards God, and their Folly in being ſo earneſt for a King, as often as they ſhould caſt their Eyes on this his Prophecy.

I know that ſome to aſſert the unbounded Power of Monarchs, have endeavoured to prove from theſe Words of the vulgar Latin Tranſlation, *hoc eſt jus Regis*, that the Monarchical Government amongſt the Jews was of this Nature, and that therefore *Samuel* does not repreſent the Kings here as ſubject to any Laws or Puniſhments, which it ſeems he conſequently ought to have done, after that he had declared their Conduct and Behaviour, as abſolutely contrary to the Rights of the Society.

But as I have already before obſerved, never was ſo weak a Foundation made uſe of, whereon to raiſe ſuch vaſt Pretenſions as may be eaſily made out ſo as to convince thoſe, who make uſe of an improper Tranſlation, both to delude themſelves, and to abuſe others, about a Queſtion which is of ſo great Importance to the Society.

Now that *Samuel* had not any the leaſt Deſign to appropriate an unbounded Power to the Kings of *Iſrael*, 1 *Sam.* 8. by theſe Words, *hoc eſt jus Regis*, appears 1*ſt*. Becauſe the word *Miſpath* ordinarily ſignifies, *conſuetudo, agendi ratio*, a cuſtom, manner or way of acting, in caſe we do not explain this word in the ſame ſenſe it carries in the 2*d. chap.* of the ſame Book, *ver.* 13. we ſhall make this paſſage to contradict *Deut.* 17. which cannot be otherwiſe avoided. This is acknowledged by Learned Men, who therein agree with *Schickardus de jure Hebræorum, Cap.* 2. *Theſſ.* 7. *p.* 65.

2*ly*. The Fathers are of the ſame opinion; ſee what *Beda* ſaith in his Expoſition upon *Samuel*, *Lib.* 2. *Hoc erit jus Regis, qui imperaturus eſt vobis. Non qualis eſſe debeat, moderatus & juſtus Imperator, expoſuit, cujus & in pleriſque Scripturæ ſacræ locis, & maxime in Deuteronomio, perfectio docetur, ſed potius Rector improbus, qui auſteritate, ſubjectos ſit oppreſſurus, intimat, ut per hoc populum a pertinaci ejus petitione revocet.* This will be the Behaviour of the King that ſhall rule over you. He doth not ſet forth the Qualifications of a moderate and juſt Ruler, who is fully repreſented to us in many places of Scripture, but eſpecially in *Deuteronomy*, but rather thoſe of a wicked Governour, who by his Cruelty ſhould oppreſs his Subjects, that

thereby he might deter them, from their obſtinate demanding of him.

3. The Divines that did not underſtand *Hebrew*, yet by good ſenſe and Reaſon were led to the true meaning of this word. *Gerſon* lays it down as a certain Truth, that this word does not expreſs a lawful Right, but an unjuſt Power. *Dictio hæc* [*Jus*] *non ſignificat ſemper Jurisdictionem, ſive Juſtitiam, ſed ſignificat interdum Poteſtatem quæ non eſt juſta*, &c. *ſicut hæc dictio Rex, quandoque ſumitur pro Tyranno, & Benedictio, pro maledictione, & Lex injuſtitiæ, pro injuſtitiæ execratione, & Deus pro Diabolo.* This word [*Jus*] doth not always ſignifie Right or Juſtice; but ſometimes an unjuſt Power, *&c.* even as alſo the word King, is ſometimes taken for a Tyrant, and Bleſſing for Curſing, and the law of unrighteouſneſs, for the execrable unrighteouſneſs, and God for the Devil. *Opuſc. contr. Adulator. Princip. in Conſid.* 8.

The ſame alſo was the Judgment of *Claudius Eſpenſeus* a famous Divine of the Romiſh Church, who told *Henry* II of *France*: Your Majeſty ought to abhor that Right nothing leſs than Regal, and nothing more than Tyrannical, which God by the mouth of *Samuel* did not allow the King, but wherewith he threatned the People, ſaying, *Hoc erit Jus Regis*, this will be the Right of a King. Treatiſe of the Inſtitution of a Prince *Ch.* 8.

4. It appears evidently that *Samuel* repreſents to us the picture of a Tyrant, in oppoſition to the deſcription of a King, God had ſet down in the 17 *chap.* of *Deuteronomy.*

5. The Jews of old have always owned as much, as appears from *Joſephus*, *Lib.* 4. *cap.* 8.

6. It appears that thoſe who conceive the matter otherwiſe, ſuppoſe a greater Power and Authority in Princes, than they aſcribe to God himſelf, who never commands any Thing but what is reaſonable and juſt; as St. *Paul* judged, who calls all the Duty we owe to God, a Reaſonable Service, *Rom.* 12.

7. If any one will take the pains to read the Characters *Solomon* has given of a King, in divers places of the *Proverbs*, he ſhall find that nothing can be more oppoſite to this *Idea* of an unbounded Power, which ſome would gather from theſe words of *Samuel.*

8. The Kings of *Iſrael* never enjoyed any ſuch Power, or ever pretended to it: the Hiſtory of *Naboth*, whoſe Vineyard King

King *Ahab* greatly desired, is a proof hereof beyond all exception. 1. *Kings ch.* 21. *Jezebel* would never have been put to the trouble, to employ false Witnesses to destroy *Naboth* as a Blasphemer, if she had had in *Israel* some of those Divines, Flatterers of the Grandeur of Princes, who abuse the Holy Scripture to authorize all the injustice and oppression they are guilty of. I am sure it is impossible to read without astonishment the extravagance of some Divines, who conceive that the words of *Samuel* contain an Explication of the Rights of Royalty, and that *Samuel* wrote them in a Book as being the publick and inconteſtable Rights of Monarchy.

Withal let us make this Reflection which is very natural: The Jews here complain of the injustice and violence of *Samuel's* Sons, who made a mock of the Laws; whereupon 'tis supposed that they to remedy this mischief, require of *Samuel* to set a King over them, that might govern them according to his own Fancy, and treat them like Slaves: Is there any thing of sense in the Supposition? We suppose that the King has already a Rule prescrib'd him in the 17 of *Deuteronomy*, and at the same Time we maintain that *Samuel* a Prophet, has in a publick Record set down the Description of a Tyrant, to whom God gives Right, to violate all the Rules he had prescribed in his Law. Sure it is that neither the Antient nor Modern Jews, did ever conceive any such thing. If we read *Josephus*, where he sets down an abridgment of the 17 of *Deuteronomy*, we shall find that he expressly asserts, that it was not only the Right, but also the Duty of the People to oppose themselves against their Designs in case they violate the Rules of the Royalty God had prescribed them. Let us consider the carriage of the *Maccabees* against *Antiochus*, and we shall find that they did not believe it unlawful to resist Tyrants, and to oppose themselves to their destructive Government.

Let any one read the 14 of the first Book of the *Maccabees*, and he will see whether the Rights of the King, which at that Time were engraven on Brass, had any resemblance with what we find in the *8th chap.* of *Samuel*. This is a sure way to judge whether the Jews ever pretended that God, by these words of *Samuel*, had granted to Kings an unlimited Power. They to this day acknowledg, that the Scripture does not only prescribe Moral Laws, which their Kings could not violate; but also

poſitive Laws, to which they were obnoxious, and which they could not tranſgreſs, without ſubmitting themſelves to the ſame puniſhments with the reſt of their Subjects. This is the common opinion of the Jews, as we may ſee in *Maimonides de Regibus Cap.* 3. *Sect.* 4. and in the treatiſe of the *Sanhedrim cap.* 19. *num.* 166, 167, 168. which Doctrine he borrowed from the *Talmud cap. Cohen Gadol*, and from *Siphri* upon the *Paraſche Schophetim.*

2*ly*, They hold that if the King did change the form of Government into Tyranny, the People had Right to reject him. The Hiſtory of *Rehoboam* rejected by the ten Tribes, is a proof hereof beyond exception.

3*ly*, They hold that the People ſuppos'd themſelves to have Right, and that it was their Duty to reject *Athaliah*, who tho' ſhe was a Woman, yet had invaded the Throne, 2 *Kings* 11 *ch. ver.* 3. which the Jews pretend to be contrary to the Law ſet down in the 17 of *Deuteronomy.*

4*ly*, They declare that King *Herod* appeared as a Criminal and indicted Perſon before the *Sanhedrim*, tho they miſtake themſelves in the ſtory related by *Joſephus lib.* 14. *cap.* 17. *Antiq.* whence it appears that he was only *Vice-Roy.*

I acknowledge that *Caſaubon*, Exercit. 13. §. 3. (from whence Biſhop *Uſher* ſeems to have taken it) maintains, that the Jews believe, That no Creature can judge the King but God alone; and to this purpoſe quotes a paſſage out of *Midraſch Devarim Rabba* in *Shophetim*: but it is now 64 Years ſince *Schickard* has obſerved *Caſaubon*'s miſtake, in handling a matter he did not underſtand; for indeed the Jewiſh Maxims are directly oppoſite to it. 1*ſt*. In the place by him cited, we find a Gloſs, which ſhews that that paſſage did not concern the Kings of *Judah*, but thoſe of *Iſrael*, who by their Power had changed the Government into Tyranny. *Schickard de Jure Regio, pag.* 63, 64. and trampled under Feet the Laws of God, which made them obnoxious to puniſhment. 2*ly*, We muſt obſerve that the Jews believ'd, that the Maxime never took place, but a little before the laſt extirpation of their States, upon occaſion of one of their laſt Kings named *Jamneus*, *Gemar* in *cap.* 2 *Sanhedrim.*

I own that *Samuel* doth not ſet down any expreſs Law for the depoſing of Kings, or puniſhing of them when turn'd Tyrants: but yet he ſuppoſed as a thing certain and evident, 1*ſt*. That their

their Crimes being contrary to the Law, were punishable according to the general Definitions of the Law against Idolaters and other Criminals: We don't find that God has spoken any thing in particular neither concerning the High-Priest, from whence the Papists falsly conclude, That he was exempt from Punishment, tho he did transgress the Law. 2*ly*, I say that tho the Execution of those Laws was not committed to Inferiour Magistrates, yet did it of right belong to the publick, according to the natural Dictates of common Sense.

But after all, whatsoever *Idea* we may frame of the Jewish Monarchy, I maintain that it cannot be of any consequence to other States. 1*st*. Because that State was formed immediately by God, for particular Ends which do not respect other Societies. God might, by Example, grant to the Family of *David*, which he had a mind to distinguish from others, some Prerogatives, which he had no design to communicate to other Soveraigns. 2*ly*, Because it is false that God has granted any particular Right to the Kings of *Israel*, contenting himself to give way to the Peoples desire, who would be govern'd by a King like their Neighbours. 3*ly*, Because whatever the Rights of Royalty may have been amongst the Jews, it is certain they have been abolished by an Order of Providence, which has wholly destroy'd the State of the Jews, and the Rights of their Kings. We don't find that Jesus Christ obliged his Followers to regulate their Obedience to Soveraigns, according to the measure of Obedience the Jews rendred to their Kings. 4*ly*, Neither do we see, that the Jews since their dispersion did ever take part with Tyrants, when the States where they lived rejected them, or that they thought themselves oblig'd thereto by the Law. 5*ly*, We should be forced to suppose that all the Christian States, and all the Bishops and Pastors in the Churches and States without the Roman Empire, had been pitifully mistaken in not following or recommending this Judaical Form of Despotical Royalty, and purely Tyrannical, described by *Samuel*, which is so strangely extravagant, that it is unworthy to insist on the refutation of it.

CHAP.

CHAP. X.

Concerning the Royal Law in favour of the Roman Emperors.

'TIS a difficult thing to underſtand the Nature of the Weſtern Governments, without being acquainted with the Nature of the Government of the Roman Emperors, of that Empire, whoſe Ruin has been the riſe of moſt of the Weſtern Monarchies. Now it is certain, that as Contraries ſerve to illuſtrate one another, ſo the oppoſition which is found between the Conſtitution of thoſe Kingdoms, and that of the Roman Empire will afford us a clear ſight of the Characters which diſtinguiſh them.

We muſt know then, that in the Year 729. of the City of *Rome*, *Auguſtus* and *Norbanus* being Conſuls, *Lata eſt Lex Regia, quâ ſumma & Regia Poteſtas, quam ſibi Populus Romanus ab ejectis Regibus ſumpſerat, in unum Principem tranſlata eſt, ita ut is, nulla Legis neceſſitate teneretur, omnique jure ſcripto ſolutus eſſet; ei verò parerent omnes.* The Royal Law was enacted, whereby the Sovereign and Kingly Power which the People of *Rome*, ever ſince their rejecting of the Kings, had taken to themſelves, was transfer'd upon the Prince alone; ſo that he was not bound to the Law at all, and was exempted from all written Conſtitutions, but that all were to obey him. This is the true *Epocha* of the Power which the Roman Emperors had of making Conſtitutions, and to publiſh Anſwers to Queſtions of Law propoſed to them.

Dion. lib. 53. Tacit. annal. lib. 2.

Antonius Auguſtinus has publiſhed ſome of the Remains of the Royal Law, which was divided into ſeveral Tables. See here ſome of the chief Articles of it, which *Gruterus* has inſerted in his Inſcriptions, *pag.* 242. ——————*fœduſve cum quibus volet facere liceat, ita uti licuit Divo Auguſto Ti. Julio Cæſari Auguſto, Tiberioque Claudio Cæſari Auguſto Germanico.*

*

Utique

Utique ei Senatum habere, relationem facere, remittere, Senatusconsulta per relationem, discessionemque facere liceat, uti licuit Divo Augusto, &c.

Utique cum ex voluntate Authoritateve, jussu mandatuve ejus, præsenteve eo Senatus habebitur, omnium rerum jus perinde habeatur, servetur, ac si è lege Senatus edictus esset, habereturque.

Utique quos Magistratus potestatem, Imperium, Curationemve, cujus rei petentes Senatui Populoque Rom. commendaverit, quibusque suffragationem suam dederit, promiserit, eorum Comitiis quibusque, extra ordinem ratio habeatur.

Utique ei fines Pomœrii proferre, promovere, cum ex Republica censebit, esse, liceat, ita uti licuit Ti. Claudio Cæsari Augusto.

Utique quæcumque ex usu, Reipublicæ Majestate, Divinarum, Humanarum, Publicarum Privatarumque rerum, esse censebit ei agere, facere jus potestasque sit, ita ut Divo Augusto, Tiberioque Julio Cæsari Augusto, Tiberioque Claudio Cæsari Augusto Germanico fuit.

Utique quibus Legibus, Plebisve scitis scriptum fuit, ne Divus Augustus Tiberiusve Julius Cæsar Augustus, Tiberiusve Claudius Cæsar Augustus Germanicus tenerentur, his Legibus Plebisque scitis, Imperator Cæsar Vespasianus solutus sit, quaq; ex quaq; Lege, rogatione Divum Augustum, Tiberiumve, Julium Cæsarem, Tiberiumve Claudium Cæsarem Augustum Germanicum facere oportuit, ea omnia Cæsari Vespasiano Augusto facere liceat.

Utique quæcunque ante hanc Legem Rogatam acta, gesta, decreta, imperata, ab Imperatore Cæsare Vespasiano Augusto jussu mandatuve ejus à quoquo sunt, ea perinde justa rataque sint, ac si Populi plebisve jussu acta essent.

SANCTIO.

Si quis hujusce Legis ergo, adversus Leges, Rogationes, Plebisve-scita, Senatusve-consulta fecit, fecerit, sive quod eum ex Lege Rogationeve, Plebisve-scito, S ve C. facere oportebit, non fecerit hujus Legis ergo, id ei ne fraudi esto, neve quit ob eam rem Populo dare debito, neve cui ea de re actio, neve Judicatio esto: Neve quis de ea re apud se agi sinito.

These are the chief Articles of the Royal Law, which were engraven in Marble, from whence *Antonius Augustinus* copied them.

them. This Marble ſtood in the Palace of St. *John* of *Lateran*, and was engraven under the Reign of *Veſpaſian*.

We are to obſerve, for the better underſtanding of this Law;

1*ſt*, That it was extorted, *Vi & Metu*, by Force and Fear, as *Dion Caſſius* tells us, *Lib.* 53. Indeed, we read in *Cicero* againſt *Verres*, *Regiè ſeu potius Tyrannicè ſtatuit*; He ordain'd King-like, or rather Tyrant-like. There is but little appearance that the Law was called *Lex Regia*, or the Royal Law, the Emperors chuſing rather to take that Title, which ſignified only the General of an Army, than that of Kings, which the People of *Rome* had an horror for, ever ſince the *Tarquins*. And *Dion Caſſius* relates in the before-cited place, with what ſweetneſs *Auguſtus* always carried it towards the Senate, and how great a ſhare he left in the Adminiſtration of the Affairs of the Empire, reſerving chiefly for himſelf the Care and Conduct of the Provinces, which were expoſed to the Violence of Enemies.

2*ly*, That the wiſeſt of the Roman Emperors have condemned the Government which this Law ſuppoſeth, for a Tyrannical Government. This was the Judgment of the Emperor *Pertinax*, in a Speech of his to the Senate, ſet down by *Herodian*, pag. 372 *Edit. Steph.*

3*ly*, That after all, *Juſtinian* agrees, that the People of *Rome* had transferred all the Power upon the Perſon of the Emperor: See how he expreſſeth himſelf; *Cum enim Lege antiquâ, qua Regia nuncupatur, omne jus, omniſque poteſtas Populi Rom. in Imperatoriam tranſlata ſint poteſtatem. Lib.* 4. *cod. de veter. Jure enucleando, & tit. de Jure Naturæ & Gentium & Civili.*

4*ly*, That by this Law the Roman Emperors were not above all Laws, but ſome Laws only, being ſubject to the reſt as well as any of their Subjects.

5*ly*, That the Power which the People of *Rome* had granted to their Emperors, expired together with them, and was fain to be renewed upon every Succeſſion.

6*ly*, That what-ever was done in virtue of this Law, before ſuch renewal of it, did make the Doer of Right liable to Puniſhment.

But

But however thus much is apparent, That though the Roman Emperors were above certain Laws; yet they had not wholly depriv'd the Common-Wealth of their Authority, nor the People of their Liberty, of which we can give ſome very evident Inſtances.

1*ſt*, This Royal Law did not overthrow the Propriety of the Subject, as appears from the recital of *Bodin*, concerning *Juſtinian*, who himſelf was obliged to demand leave of a Widow to pull down her Houſe, for to build the Church of *Sancta Sophia*, which ſhe had refuſed the Lords he had ſent to deſire her to ſurrender her Houſe to him.

2*ly*, It did not expoſe the Subjects to the blind Fury of the Emperors, otherwiſe it would have been a great Folly in *Theodoſius* to have undergone the Publick Penance which St. *Ambroſe* laid upon him, for having caus'd ſome of the Inhabitants of *Theſſalonica* to be murther'd by his Souldiers, for aſſiſting in a popular Sedition, where a General of his Army had been kill'd.

3*ly*, The Emperors never pretended that the People were become their Slaves: In which Point the *Romans* differ'd from the *Perſians*, which made *Lactantius* ſay, ſpeaking of *Maximian*, as of a Tyrant; *Poſt devictos Perſas, quorum hic ritus, hic mos eſt, ut Regibus ſuis in Servitium ſe addicant, & Reges Populo ſuo, tanquam familia utantur, hunc morem nefarius homo in Romanam terram voluit inducere, quem ex illo tempore victoriæ, ſine pudore, landabat.* After he had overcome the *Perſians*, whoſe Cuſtom and Manner it is to be Slaves to their Kings, the Kings uſing their People as their Servants and Domeſticks, this wicked Man was willing to introduce the ſame Cuſtom amongſt the *Romans*, which from the time of his this Victory he commended without all ſhame.

4*ly*, The Emperors made no alterations in the Laws, though they attributed to themſelves the right of interpreting them, and to enact new Ones upon emergent Occaſions.

The Right of aſſembling the Senate, and the Nomination to Offices and Places of Truſt, as well as the Power of appointing Governours in the Provinces, which before were left to the diſpoſal of the Senate, was the greateſt Right of the Emperors.

The Right of making Peace and War, was of the ſame Nature: There was only this difference, *viz.* That this Right was granted to the Emperors for ever, whereas it was but rarely granted to the Generals which *Rome* formerly nominated.

And as for the Right of not being ſubject to Laws, that was only a Right limited to certain Laws, and was not to be underſtood with reſpect to all Laws whatſoever; Accordingly we ſee, 1*ſt.* That the Emperor *Conſtantine* expreſſeth himſelf thus: *Contra Jus reſcripta non valeant, quocunque modo fuerint impetrata. Quod enim publica Jura præſcribunt, magis ſequi Judices debent.* Orders contrary to Law are invalid, which way ſoever they be obtain'd. For the Judges ought to keep themſelves to what the Publick Laws preſcribe, *Lib.* 1. *cod. Theod. de diverſ. reſcript.* The Emperors, *Theodoſius* and *Valentinian*, ſpeak yet more expreſly; *Digna vox eſt Majeſtate Regnantis, legibus alligatum ſe Principem profiteri. Adeo de Authoritate Juris, noſtra pendet Authoritas.* It is a ſaying worthy of the Majeſty of a Ruler, for a Prince to profeſs himſelf bound by the Laws: ſo far does all our Authority depend upon the Authority of the Law. *Lib.* 4. *cod. de Leg. & conſtitut. Princip.* We ſee in the ſecond place, that the Senate ſentences *Nero*, without believing that by this Act they violated the Oaths they ſwore to the Emperors every New-years day. The Senate declares ſome Emperors, as *Heliogabalus*, Enemies of the State, and arm their Subjects to deſtroy them, and make void all their Acts: which makes it evident, that tho the Emperors often boaſt themſelves of their not being tied to Law, yet they were fain to approve the Proceedings of the Senate againſt their Predeceſſors. The Reaſon of this Conduct is, that though it be a general Compact of Humane Society to obey Kings, as St. *Auſtin* ſpeaks, *lib.* 3. *confeſſ. c.* 8. yet it is no leſs notorious, that this Compact doth not reſpect Tyrants.

Accordingly we ſee that the wiſeſt of the Emperors did ſo little believe that it was lawful for them to govern arbitrarily, that *Trajan*, in favour of whom the Royal Law was renewed, at the time of his exaltation to the Empire, addreſſeth himſelf in theſe words to the Prefect of the *Prætorium*; *Accipe hunc gladium, pro me ſi rectè agam; ſin aliter, in me magis; quod moderatorem omnium errare minus fas ſit*; Take this Sword and uſe

it

it for me, in case I rule well; but if not, rather against me; because it less becomes him that rules over all, than it does others, to commit an Error. *Dion. & Aurel. Victor.*

2*ly*, That the Emperors, who were most renowned for Vertue, did never affect to publish any Laws of their own Heads, till after they had got them approved by the Senate. This is that which *Lampridius* records concerning *Alexander Severus*; and we see the same practis'd by *Theodosius*, *l. Humanum C. de F.*

But whatever this Royal Law may have been, sure it is,

1*st*, That the same was abolished together with the Roman Empire, which ended in the West with *Augustulus*.

2*ly*, That it ceased in the East with the Emperors of *Constantinople*.

3*ly*, It is certain that they who ruin'd the Empire in the West, did never adopt this Royal Law, to govern their Subjects by that Arbitrary Rule.

4*ly*, It is also certain that the Princes, who since the Year 800 have succeeded *Charles* the Great, and who have taken to themselves the Names of *Roman Emperors*, did not govern according to this Law, nor ever pretended that that Law ought to be observed in favour of them, under pretence of their bearing the Title of *Roman Emperors*.

This is that, which I believe it will be of use solidly to evince, though I intend to do it very compendiously, that I may not tire the Reader.

CHAP. XI.

That the States of the West, and of the North, never knew this Royal Law.

THough the People of the West allow'd their Princes the Title of King, yet it may be averr'd, that the most part of those Kingdoms, which had their Rise from the Ruins of the Roman Empire, never owned this Royal Law. The Power of their Kings was originally limited, as *Cæsar* witnesseth in his Commentaries concerning the German Kings, which were, to speak properly, only Commanders or Generals. I make particular mention of the Germans, because, for the most part, they were the Founders of the Northern and Western Kingdoms; *Germany* having been, as it were, the Nursery, from whence have proceeded most of those Nations, who at this Day have any Name in *Europe*. See what *Tacitus* asserts concerning the German Kings; *Nec Germanorum Regibus infinita aut libera potestas est; de minoribus rebus Principes consultant, de majoribus omnes. Rex aut Princeps auditur Authoritate suadendi, magis quam jubendi potestate; si displicuit sententia, fremitu aspernantur.* Neither is the Power of the German Kings altogether free or unbounded. Matters of lesser Moment are left to the Advice of the Princes, but those of greater Concern are debated by the whole Society; they hear the King as one having Authority to persuade, rather than any Power to command them; and if his Sentiments displease them, they are rejected with boldness.

Cæsar gives us much the same portraicture of the Kings of the *Gauls*.

And that their Successors, who tore the Roman Empire to pieces, have retained this Form of a Limited Monarchy, is Matter of inconteſtable Evidence, to every one that will take a little pains to peruse the Histories of those Nations, to run over their Laws, and take notice how they have carried it towards their Kings when-ever they fell to Tyranny.

They

They who would be informed how far the Power of the Gothick Kings in *Spain* was limited, need only to caſt their Eyes upon the account which *Gregory* of *Tours* gives us, *Lib.* 2. *cap.* 31. concerning this Matter, and upon their Hiſtory in the Chronicle of St. *Iſidorus*. We have the fundamental Laws of their Kingdom ſet down by *Molina*, *de Hiſpan. Primogenit. Cap.* 2. *N.* 13.

But this appears yet more clearly from the Body of their Laws, which is ſtill extant, and publiſhed by *Lindenberg*.

1*ſt*. It appears that their Laws were enacted, *ex univerſali conſenſu Civium & Populi*, by the univerſal Conſent of the Citizens and People, *Lib.* 1. *Tit.* 7.

2*ly*, It appears that the Kings were no leſs obnoxious to the Laws, than the Subjects themſelves. *Lib.* 2. *Tit.* 2.

3*ly*, It appears not that the Romans Laws, and much leſs their Royal Law, had any Authority amongſt them. *Lib.* 2. *Tit.* 9.

4*ly*, It appears, that their Kings had not ſo much as the Power to pardon Crimes, without the conſent of the Biſhops, and chief Lords, *Lib.* 6. *Tit.* 7.

Laſtly, It is evident from their Hiſtory, that their Kings were liable to be depoſed by the States, when ever they went about to tranſgreſs their Bounds, and tyrannize over their Subjects.

I confeſs, that the Council of *Toledo* IV. in their laſt Canon thus expreſs themſelves. *Quicunque amodo ex nobis, vel totius Hiſpaniæ populis, qualibet conjuratione vel ſtudio, ſacramentum fidei ſuæ, quod pro Patriæ Gentiſve Gothorum ſtatu, vel conſervatione Regiæ ſalutis (vel incolumitate Regiæ Poteſtatis) pollicitus eſt, temeraverit, aut poteſtate Regni exuerit, aut præſumptione Tyrannicâ Regni faſtigium occupaverit, Anathema in conſpectu Dei Patris & Angelorum, atque ab Eccleſia Catholica, quam perjurio profanaverit, efficiatur extraneus, & ab omni Cœtu Chriſtianorum alienus, cum omnibus impietatis ſuæ ſociis: quia oportet ut una pœna teneat obnoxios, quos ſimilis error invenerit implicatos.* Whoſoever from this time forwards, either of us, or of any of the People of *Spain*, ſhall by any Conſpiracy or Attempt, break the Oath of his Fidelity he has taken for the welfare of his Country, and the Gothick Nation, the conſervation of the King's Life, and maintenance of the Royal Power; or who ſhall deprive him of his

his Kingdom, or by a Tyrannical Presumption usurp the Throne, let him be *Anathema* in the sight of God the Father, and the Angels, and be cast out from the Catholick Church, which he has profaned by his Perjury, and be turn'd out of all Christian Assemblies, with all the Complices and Associates of his Wickedness: because it is but fit, that all they should be liable to the same Punishment, who are involved in the same Crime. The same is repeated in the Council of *Toledo* V. *cap.* 1. and in the Council of *Toledo* X. *Cap.* 2. But we may affirm with truth, that those who have worn this Canon threadbare by their frequent citing of it, did either not understand it, or changed the sense of it to impose upon and delude others.

Wherefore let those that read these words well observe;

1*st*. The Order which the Fathers of the Council of *Toledo* IV. observe in speaking of Oaths, *Sacramentum fidei suæ, quod pro Patriæ, Gentisque Gothorum statu, vel conservatione Regiæ salutis (vel incolumitate Regiæ potestatis) pollicitus est.* I own it is to be considered that the [*vel*] here signifies as much as [*&*], this being the common stile of those Times. I say it is remarkable, that the good and happy State of the Nation, was the first Object of their Oaths, the second Object was join'd with it, *viz.* the Conservation of the King, yet with the understood *Proviso*, if he did not oppose the first, but was subservient to it. For indeed, I cannot believe that God made the *Goths* of another nature than the rest of Mankind, or so much Fools (enough) as to prefer the Means before the End; and to believe that they ought to engage themselves to seek the Means, any further than they are of use to obtain the End. *Ad Tutelam Legis Subditorum Rex creatus est.* The King, saith Chancellor *Fortescue*, is made for a Safeguard to the Subjects Laws. The Preservation of the Subject is the first Obligation, and the next that of the Prince.

2*ly*, We must observe, that the words of the Canon regard those, who by a Conspiracy undertake either to kill the King, or to deprive him of his Kingdom, or to usurp the Throne by a Tyrannical Presumption. But all this while they suppose a lawful King, that is to say, a King acknowledged as such by the State, attack'd by some furious Conspirators, with design to dethrone him, against all Right and Justice, for to place another in his stead. The Council does not in the least suppose that it is unlawful for the State to deprive a Tyrant of the

Authority he abuſeth. If we ſuppoſe the contrary, we muſt take St. *Iſidore*, who was Preſident of that Council, for a Fool, fit to be ſhut up in *Bedlam*, for he expreſly makes this Obſervation, that *Rex à rectè agendo vocatur ; ſi enim piè & juſtè & miſericorditer agit, merito Rex appellatur : ſi his caruerit, non Rex ſed Tyrannus eſt.* Addit 2 ad Cap. Caroli Magni, c. 21.

3*ly*, I maintain that of all the Paſſages of Antiquity which are alledged by the Defenders of Paſſive Obedience, there is not any to be found which they ought to have been more careful to ſuppreſs in ſilence, than that of this Council. And we muſt judg them poſſeſs'd with a brutal Stupidity, or guilty of ſtrange Malice, in employing ſuch a Paſſage as this to ſupport their Prejudices in favour of thoſe Princes who overturn the Government. For who were theſe Fathers of the 4*th* Council of *Toledo?* They were the very Men, who three Years before this Council, had caſt off *Suinthila*, after he had reign'd ten Years over them; who had raiſed *Siſinandus* in his room, againſt whom they juſtly feared that ſome furious Fellows might hatch a Conſpiracy. They were the Men who pronounced three *Anathema's* againſt *Suinthila* for the Crimes he had been found guilty of, whilſt he was poſſeſt of the Royal Power. They were the Men who declar'd, That if a King does not well acquit himſelf of the high Charge he is entruſted with, he ought to be excommunicated, and conſequently depriv'd of all Power in his Kingdom. All which is contain'd in *Chap.* 75. of the ſame Council, where they obſerve, that the Election of Kings took place after the Death of their Fathers. Which makes it apparent, that there is no ground at all to ſuſpect the *Goths*, or the Biſhops of *Spain* and of *Gallia Narbonenſis*, who aſſiſted at that Council, to have eſpous'd the Maximes that ſome would fix upon them.

The *Lombards* obſerved the ſame Rules in their Government, as we may ſee in their Hiſtory written by *Paulus Diaconus.*

And as for what the other Kingdoms that were formed of the Ruines of the Empire of *Charles* the Great, we find that their Power was always limited in the ſame manner, none of thoſe Princes having ever thought of reviving the Royal Law of the Ancient Roman Emperors in favour of themſelves.

And becauſe this Affair bears ſo great a reſemblance with the preſent Revolution, I deſire the Reader not to take it ill, that

I have copied the 75th Canon of the 4th Council of *Toledo*, at the end of these Remarks, and that he may make his Reflections thereupon: for he will find that those who make use of it, have no reason to complain, That they who have made choice of the Prince of *Orange*, upon the desertion of *James* II, after so many unjust Proceedings and Enterprizes, tending to the total overthrow of the State and Government, have exactly followed this Example of the Kingdom of *Spain*; and that the Clergy who have followed these Decisions of State, have therein imitated the Conduct of this Council of *Toledo*; and that those who oppose themselves against it, are found in the same Case with those whom the Church of *Spain* and of *Gallia Narbonensis* did so solemnly excommunicate.

The Kings of *Burgundy* reigned with the same Limitations: For which we may consult the Law of *Gondebaud*, which is still extant, and which was made, *Habito Consilio Comitum & Procerum*, with the Advice of the Earls and Lords, who signed the Law as well as King *Gondebaud*: which makes it very evident that the Kings of this People had not the Legislative Power invested in them alone. We find the same Clause in the second Addition to that Law. And indeed we need only to take notice of what *Marius Aventicensis* relates concerning King *Sigismond* in his Chronicle, to enable us to judg that those People had other Laws besides that of the Will of their Princes. For this Prince having caus'd his Son to be strangled without any Form of Justice, his Subjects conceived so great an Indignation against him, that he was forced to hide himself, and to take upon him a Fryars Habit, for a Mark of his Repentance, which yet was not able to give them Satisfaction, for as soon as he appeared, they delivered him to *Clodomer* King of *Orleans*, who carried him to *France*, where soon after he lost his Life in a Tragical manner.

We find Instances of the sharing of the Soveraign Power between the Lords and the King in the Ancient Histories of *Sweden*, as may be seen in *Joan. Magnus*, *Hist. lib.* 15, & 29. and in *Crantzius*, *lib.* 5. We find also that by the Oaths taken at the Coronation of their Kings, the Bishops, Nobles, Citizens and People oblige themselves, in case the King commit any thing by himself, or by another, contrary to the Articles or Treaty he swears to at his Coronation, to oppose themselves to his Enterprizes

prizes upon their Honour, and upon their Oath, *Chytræus*, *lib.* 2. They who do not know the Manner of the States of *Sweden* deposing of *Sigismond*, and the Reasons they alledged for it to King *James*, may peruse the Relation of it in *Goldast*.

We find the same Limitations of the Regal Power in *Denmark*, as *Pontanus* observes in his 8*th* Book; and it was for endeavouring to break through these Bounds, that *Christiern* the II. was deposed, as may be seen in *Petersen*, in *Chron. Holsat.* Where he hath set down the Acts and Reasons of the State of *Denmark* about that Proceeding.

That the Power of the Kings of *Hungary*, was a Power limited by the Fundamental Laws of the State, is a Matter so notorious, that *Chalcondilas* has made it his Observation, in the second Book of his History, where he compares the Royalty of *Hungary* in that respect to the Kingly Power in *England*. And which may be farther made out by the Fundamental Laws of *Hungary*, set down by *Bonfinius*, *Decad.* 4. *lib.* 9. Where we also find the Oath taken by those Kings at their Coronation, being the most expresly conditional that can be imagined.

Chalcondile saith the same Thing of the Kingdoms of *Arragon* and *Navarre*, Lib. 5. where he observes, that the Kings did not create the Magistrates, that they could not make any Garrison without the Consent of the People, and that they could not require any thing of them, contrary to their Customs, that is to say, contrary to their Laws. Accordingly we find that the Kings of *Spain* have no Power to lay any new Impositions upon their Subjects without their consent. They are obliged to swear they will observe the Laws. And in *Arragon* the People declare to the King at his Coronation, that if they do not perform their Oath and Promise, their Subjects are thereby set free from their Oath of Allegiance.

We find the same Thing in the History of the Kingdom of *Portugal*, but especially in that part of it which gives an Account of the Reign of *Alphonsus* III. The Fundamental Laws of which Kingdom we find in the 17*th* Title of the Ordinances of *Portugal*, Lib. 2. §. 2, 3. *& seq.*

So true is it that all those Kingdoms never in the least supposed that their King had an Absolute Power over them. And it is as certain, that almost all those States have always

maintained, That the Power of their Soveraigns was ſo limited,

1. That they could make no Laws without the States General of the Kingdom.

2. That they could not levy any Mony on their Subjects without their Conſents.

3. That they could not break the Laws according to their Will and Pleaſure.

4. That in caſe of their violating the Fundamental Laws of the State, they were liable to be deprived of a Power which they abuſed.

5. That the States were free to chuſe ſuch a Form of Government, and ſuch a Perſon for to govern them, as they thought moſt expedient for them.

This is that which I intend to prove more particularly by Examples taken from the Empire, and the Kingdoms of *Poland*, *France*, *Scotland*, and *England*; to which I ſhall add ſome Remarks upon thoſe Titles which deceive ſome, who conſider Things of this Nature with too little attention.

CHAP.

CHAP. XII.

That the Power of the Emperors of the West, is a Limited Power.

THis is a Matter that may be eaſily gathered from theſe following Inſtances:

1. Becauſe *Charles the Great*, who was the firſt that took upon him the Title of *Roman Emperor*, reigned according to the Cuſtoms of the Princes of *Germany*, of whoſe Opinion concerning an Abſolute and Deſpotical Government, *Tacitus* has given us ſome Account, who repreſents them, as having the greateſt abhorrence for it.

2. Becauſe *Lewis the Good*, did himſelf acknowledg, that the Soveraign Power was ſhared between him and the chief Members of the Empire; *Capitular.* Lib. 2. Tit. 3. *Sed quanquam ſumma hujus miniſterii in noſtra perſona conſiſtere videatur, tamen & Divinâ Authoritate, & humanâ ordinatione, ita per partes diviſum eſſe cognoſcitur, ut unuſquiſque veſtrûm in ſuo loco & ordine, partem noſtri Miniſterii habere cognoſcatur.* But though the whole of this Miniſtry ſeem to conſiſt in our Perſon, yet it is known to be ſo ſhared and divided, as well by Divine Authority, as Humane Ordination, that every one of you in his reſpective Place and Order, is known to partake of this Miniſtry. Thus was he pleaſed to expreſs himſelf in the Aſſembly of the States General, whoſe Authority he owned to be as much of Divine Right as his own; which made *Charles du Moulin*, the moſt famous of all French Lawyers, ſay, *Ergo ſolum Caput non omnia poteſt, imo perſona Principis non eſt Caput niſi Organicum, ſed verum Caput eſt Principatus ipſe, cum membris integrantibus eum*; Wherefore the Head alone cannot do all, yea, the Perſon of the Prince is only the Organical Head, but the true Head is the Principality it ſelf, with its integral conſtituting Members. Which are his expreſs words in his Commentaries upon the Stile of Parliament dedicated to the firſt Preſident of *Paris*, and printed with Privilcdg.

3. Becauſe though the Weſtern Empire did ſeem to be ſo Hereditary, that the Emperors had divided it amongſt their Children; yet, in proceſs of time, it became Elective, which began to take place in the Eleventh Century, in the Perſon of *Rudolphus*.

4. In that they always excluded Females from the Succeſſion to the Empire, though they had reſpect in their choice to the Imperial Blood.

With reſpect to the Rights of Soveraignty we find, that tho the Empire be a Monarchical Government, yet we ſee it is mixed with Ariſtocracy; for the Emperor cannot enjoy it, but with the Conſent of the States of the Empire, without making himſelf liable to be contradicted and depoſed alſo.

He has not the Right of making Laws, without the Conſent and Authority of the States of the Empire.

He has no right to declare War, without the foregoing conſent of the States.

He has no right of levying any Impoſition on the States, without the Conſent of the Diets.

Whenever he begins to uſurp the Rights that do not belong unto him, and to infringe the Rules of Government he has ſworn to obſerve, the States have a Right to oppoſe his Enterprizes, to repel Force with Force, and finally to deprive him of the Empire, in caſe he continue in the Deſign of changing the Form of Government. For though there be no Laws, which bound and regulate the Article of the Depoſing of Emperors, when they abuſe their Power for the overturning of the State, or for invading the Rights of the Princes of the Empire, and Imperial Cities; yet the Germans have always held, and ſtill do hold it for a certain Truth, that it is a Right inherent in the Empire, to deprive an Emperor of the Imperial Power and Dignity, and to confer the ſame on another. This is the common Opinion of the German Lawyers repreſented to us by *Lampadius*, *Arnizæus*, *Diderick*, *Conringe*, and many others.

And indeed we may ſay, that there is nothing more certain, if we conſider the Examples of Emperors that have been depoſed ſince theſe 7 or 800 Years; Examples that are neither rare nor unknown, and upon occaſion of which the States of the Empire have had an opportunity to declare & make out their Rights and Pretenſions. One of the firſt Examples we find reſpecting this Matter,

ter, is the Depoſition of *Lewis the Good*, in the Year 833. The Acts whereof we may ſee in *Baronius*, *Goldaſt*, *du Cheſne*, and *le Comte*; Whereupon we may make theſe Reflections; 1. That the Thing was done with the Conſent of the Biſhops, and of all the Nobility. 2. That the Eſtates above all accuſe him for having broke his Coronation-Oath. 3. That though this *Lewis* was afterwards reſtored to the Throne of the Empire, yet thoſe that reſtored him, never conteſted the Power the State had to reject a Prince, who overturn'd the Rules of Government, but ſuppoſed only that he had not been duly convinced of the Crimes laid to his charge.

We have another Example, in the Depoſition of *Henry* IV. The Archbiſhops, Biſhops, Dukes and Earls, declare, that they had not ſworn to him, till after he had engaged himſelf by his Oath to them, to obſerve the Laws and the Capitulations of the Empire: ſo that having now violated them, they were ſet free from the Oath they had ſworn to him, and that they conſidered him as an Enemy, againſt whom they would wage war to their laſt breath. *Lambert Schafnaburg.*

One of the laſt Inſtances we find in the depoſing of the Emperor *Wenceſlaus*, who was depoſed by the Electors of the Empire in the Year 1400, after that he had been twice taken Priſoner, and had been exhorted by the State, to amend and take up from his irregular Actings. *Aventin. lib. 7. Amalium & Cuſpinian. in Vita Venceſlai.* We may ſee the moſt part of theſe Articles, and many more ſolidly confirmed in the Book of *Carpſovius*, *de Lege Regia Imperatorum Germaniæ*, and in the Imperial Capitulations, and other Laws, which he has cauſed to be printed at the End of his Treatiſe.

CHAP.

CHAP. XIII.

That the Power of the Kings of Poland *is Limited.*

WE find the ſame Limitation in other States, whether they be Succeſſive or Elective, I ſhall content my ſelf to alledge only one Example concerning the Kingdoms that at preſent are Elective, and that ſhall be of the Kingdom of *Poland.*

Poland, from the Relation of *Cromer*, gives us an illuſtrious Example of the Wiſdom of Northern People, in bounding the Power of their Princes. After that the Family of *Lech*, the firſt Founder of that Kingdom, was extinct, that State changed the Royal Government, into that of XII *Waywods*, otherwiſe called *Palatines*. Theſe Palatines abuſing their Authority, they re-eſtabliſhed the Regal Government, in favor of *Cracus*, whoſe ſecond Son was expell'd by the *Polanders* for killing his Elder Brother.

They afterwards choſe the Daughter of *Cracus* for their Queen, who, 'tis ſaid, having drowned her ſelf to avoid Marriage, the *Polanders* again eſtabliſhed 12 *Palatines*, as they had done before: but afterwards ſuppreſſed them again, becauſe they found them inſufficient to defend the Countrey, and choſe *Premiel* for their King. This is *Lesko* the 1, who lived about the year 750. It was not till the Year 965 that *Mieſco* turn'd Chriſtian, and took upon him the Title of King of *Poland*, which Title was confirmed by the Emperor *Otho* III to *Boſletas* his Succeſſor.

His Succeſſors having reigned until *Lesko* Surnamed the *Black*, who was forced by Flight to quit the Kingdom, becauſe he was not able to reſiſt the *Tartars*, and died without Iſſue: the Poles wearied with inteſtine Wars, excited by the Ambition of their great Lords, choſe *Premiel* to be their King, who being kill'd, without leaving any Children behind him, they made choice of *Ladiſlaus*,

Ladiſlaus, who was afterwards deſpoſed, for Male-Adminiſtration, by the States General. *Wenceſlaus* King of *Bohemia*, who had been choſen in his ſtead, dying in the Year 1305, *Ladiſlaus* was recall'd to the Government, to whom *Caſimir* his Son ſucceeded; who in the Year 1370 deſigned for his Succeſſor, with conſent of the States, *Lewis*, the Son of *Charles* King of *Hungary*, by his Siſter. The *Poles* after the Death of *Lewis*, choſe *Edwiga* his Daughter, upon condition that ſhe ſhould marry the Perſon whom the States ſhould recommend to her for a Husband; the Perſon recommended by them was *Jagello* Duke of *Lithuania*, who had the name of *Ladiſlaus* given him by the Archbiſhop of *Gneſna*, who anointed and Crowned, after he had firſt baptized him. He outliv'd *Edwiga* who died without Children, and had for Succeſſors the children of his fourth Wife, who reached until *Sigiſmund Auguſtus*, after whoſe Death the States choſe in the Year 1573 *Henry* Duke of *Anjou*, who after he had reigned four Months in *Poland*, abandon'd the Kingdom, to take poſſeſſion of the Crown of *France*, and was deprived of that of *Poland*, by the States, as may be ſeen from the Acts recorded by Hiſtorians. This Vacancy occaſion'd a Diviſion in the States, one part of them having choſen the Emperor *Maximilian* the Second; and the other part *Anne* the Siſter of *Sigismund Auguſtus*, to whom they gave *Stephen Battori* Prince of *Tranſylvania* for her husband, who Married the ſaid *Anne*, and was Crowned at *Cracovia* in 1576. After the Death of *Stephen*, the States choſe *Sigiſmund*, Son of *John* III King of *Sweden*, and of *Katharine* Daughter of *Sigismund* I. of that name, King of *Poland*.

It is evident from this Abridgment, 1*ſt*. That the *Poles* always pretended to be the Maſters that had right to give the Form to their State, which ſeemed to them moſt comporting with the Good and Welfare of it.

2*ly*, That they took it for granted that they had Power to reject thoſe Princes or *Palatines*, whoſe Behaviour was contrary to the Publick Good, for which they had raiſed them.

3*ly*, That they ever had an Eye to Succeſſion, ſo far as to beſtow the Crown ſometimes upon Daughters, yet not thinking themſelves bound to it, but only ſo far as the good of the State did permit.

4*ly*, That

4*ly*, That they had regard to the appointing of a Succeſſor, when the States had firſt conſented to it.

5*ly*, That the Flight or Deſertion of their Kings, has appear'd to them a ſufficient Ground to proceed to a new Election, in their ſtead, and to reject them. This is evident from the Hiſtory of *Lesko*, ſurnamed the *Black*, and of *Henry* the III of *France*.

6*ly*, That the anointing and Crowning of their Kings, was of no avail to diſpenſe with their Oath in which they publickly declare, That if they do not obſerve the Laws of the State, the People are diſpenſed from their Oaths of Fealty they have ſworn to them.

CHAP. XIV.

That the Monarchy of France *is not an Abſolute Empire, but a Limited Royalty.*

'TIS not of to day only, that ſome have imagined the Monarchy of *France*, to be an unlimited Power, and an Abſolute Empire: *Bodinus* was of that opinion before them; but they that follow his ſentiment, underſtand nothing of that Conſtitution: or if they do, have a greater deſire to flatter the unjuſt Pretenſions of that Court, than to maintain the Truth.

We need only to lay open the nature and antient Power of the States General, with the manner of their Behaviour towards thoſe Kings, who abuſed the Power committed to them, to make it evident, that the French Monarchy is limited in its Conſtitution.

Under the firſt and ſecond Race of the Kings of *France*, there was no mention of any Aſſembly of the States General, but only of the *Franks*, that is to ſay, the Nobles and Prelats, who were uſed to meet together, on the firſt of *May*, in the open Field, where they deliberated with the King, concerning matters of Peace and War, and took Reſolutions of what was to be done all the Year after. After the breaking up of this Aſſembly,

bly, the Court of the Royal Palace, otherwiſe called the Court of *France*, compoſed of the Prelats and Great Barons, that is to ſay, the immediate Vaſſals of the Crown, met together five or ſix times a Year to take care of the Execution of what had been reſolv'd upon in the General Aſſembly, to deliberate about publick Affairs that offer'd themſelves, and to determine as Judges the moſt important matters of private Perſons.

Under the declination of the 2*d* Race, the Governours of Cities and Provinces, having made themſelves Hereditary Lords of the places of their reſpective Governments, under the Title of Counties and Dutchies, cut themſelves large Portions out of the Soveraign's Lands: by which means the Court of *France* was no more frequented by the Lords, except only, when they were obliged to do Hommage, and take the Oath of Fidelity, or when an Enemy invaded *France*: for then they preſented themſelves before the King, to adviſe about the preſent neceſſity. This Diſorder continued until the Reign of *Philip Auguſtus*, who having conquer'd *Normandy*, and the Counties of *Tourain*, *Anjou*, *Maine*, from *John without Land*, *King of England*, and the Country of *Vermandois* from the Earl of *Flanders*; reſtored in ſome manner the Royal Authority, and forced the Barons to frequent his Court, and to be preſent at the Aſſemblies he called for the Affairs and Neceſſities of State. Nevertheleſs thoſe Aſſemblies conſiſted only of the Prelats and Barons, and this till the Reign of King *John* (ſome Authors ſay of St. *Lewis*) who being taken at the Battle of *Poictiers*, and carried to *England*, they were forc'd to raiſe a great Sum of Money for his Ranſom; and to this End they appli'd themſelves to the Merchants, and other Inhabitants of Cities, who were then the richeſt Men of the Kingdom, who agreed to pay the King's Ranſom, upon condition that they might be received into the Charges and Offices, as well of Peace as of War, and be allowed to have a Place and deliberative Voice in the States-General, which was accordingly granted to them.

The Power and Prerogative of the States-General was ſuch, that the Kings of *France* could not make any new Levies of Mony without them. Which continued ſo till the Reign of *Charles*

VII. as is acknowledged by *Philip de Commines Lib.* 6 *c.* 7. Neither could they make any new Ordinances, nor repeal or suppreſs the old, without the conſent of the ſaid States, as is owned by *Davila lib.* 2 *de li Guerri Civili.*

Under the Firſt, and ſecond Race of the French Kings, the Ordinances were likewiſe made in the Aſſembly of the Prelats, and Barons, which conſtituted the Soveraign Court of *France*; 'twas there the Treaties of Peace were made between the Kings of *France* and Foreign Princes, and Nations; the Portions of the Children of *France* were there regulated; there they treated of their Marriages, and generally of all that concern'd the Affairs of State, of the King's Houſhold, and the Children of *France*. The Ordinances that were made in the ſaid Aſſemblies, in the Name of the Kings of *France*, were conceived in theſe Terms; *Nos de conſilio & conſenſu Procerum noſtrorum ſtatuimus*, &c. We with the Advice and Conſent of our Lords do ordain. And from hence is derived the Cuſtome obſerved at this Day, of verifying the Royal Edicts in the Parliament of *Paris*, which in ſome ſort repreſents the Aſſembly of the Prelats and Barons, who compoſed, as we have ſaid, the Soveraign Court of *France*.

In the Treaſury of the French Kings, at *Chartres*, are found ſeveral Treaties between King *Philip Auguſtus*, and *Richard* and *John without Land*, Kings of *England*, at the bottom of which are the Seals of the Prelats and Barons; by whoſe Conſent and Approbation the ſaid Treaties had been made. And Pope *Innocent* VI having ſent to entreat St. *Lewis* that he would be pleas'd to permit him to retire into *France*, to ſecure himſelf from the attempts of *Frederick* II. the ſaid King anſwered the Popes Nuncio, that he would communicate the Matter to his Parliament, without whoſe Conſent the Kings of *France* could do nothing of Importance. This is related by *Matthew Paris*, in the Life of *Henry* the III. King of *England*, *ad Annum* 1244.

We find alſo the manner how the States determined all Affairs reſpecting the Crown and Succeſſion, as for Example the Proceſs which was between *Philip de Valois*, and King *Edward*. In this Aſſembly of the States, ſaith the Chancellor *de l' Hoſpital*, was Tried and Debated the moſt Noble Cauſe that ever was, *viz.*

To

To whom the Crown of *France* did belong, after the Death of *Charles* the Fair, to *Philip* of *Valois* his Couſin, or to *Edward* King of *England*, King *Philip* not preſiding in that Aſſembly, becauſe he was not yet King, and beſides was a Party.

It appears clearly from the Power of the States General, That the Power of the King of *France* is bounded by Law; indeed this is a Truth whereof we cannot make the leaſt doubt, foraſmuch as we find it acknowledged by *Lewis* XI. the moſt unbridled Monarch that ever was. See what he writes in the Roſary of War, compoſed by him a little before his Death, for the uſe of *Charles* VIII. his Son. "When Kings or Princes, "(ſaith he) have no reſpect to the Law, they take from the "People, what they ought to leave them poſſeſt of, and do "not give them what they ought to have; and in ſo doing they "make their People Slaves, and thereby loſe the name of a "King. For no body can be called a King, but he that rules "and has Dominion over Free-men.

This thing was ſo notorious even to Strangers themſelves, that *Machiavel* maintained that the Stability of the Monarchy of *France*, was owing to this, becauſe the Kings there were obliged to a great number of Laws, which proved the Security and Safe-guard of all their Subjects. *Lib.* 1 *di Diſcorſi c.* 16.

Meſſire Claudius de Seiſſel, in his Treatiſe of the French Monarchy, *part* 2. *chap.* 12. dedicated to *Francis* I. maintains upon this account, That the Monarchy of *France* does partake of Ariſtocraſy, which makes it both more perfect and durable. Yea he aſſerts that it was alſo in part Democratical, and expreſly maintains that an abſolute Monarchy is no other than true Tyranny, when it is made uſe of againſt Religion, Juſtice and the Government; That a Prince who paſſeth theſe Bounds, muſt be held and eſteemed for a wicked Tyrant, cruel and intolerable, who by this means pulls down the Hatred of God and his Subjects upon himſelf.

Du Haillan Hiſtoriographer of the Kings *Henry* III and *Henry* IV. follows the ſame notion of *Claudius de Seiſſel*, in his third Book of the ſtate of the Affairs of *France*, dedicated to *Henry*

III. maintaining that the Government of *France* is compoſed of Ariſtocraſy and Democraſy, *p.* 168.

And indeed who can judg otherwiſe, when he attentively conſiders theſe ſix things, which are a part of the publick Conſtitution of the Kingdom of *France.*

1*ſt.* That though the Crown for a long time ſince has followed the form of Succeſſion, yet the form of Election is ſtill obſerved at the Coronation. *Hunc vultis, hunc jubetis eſſe Regem,* This is he whom you will and require to be your King; theſe Words are ſpoken to the People before the Coronation. We find the Peoples Election is mentioned, and the King called elect in the form of Coronation, publiſhed by *Hugo Menard* a *Benedictin.*

2*ly.* The King is there engaged by his Oath, to rule according to the Laws of the Kingdom; as may be ſeen in the Ceremonial of *France.*

3*ly.* He can make no Laws but in the Parliaments or States General; whereof we have an Inſtance in the States of *Orleans,* in the Year 1560. and is the ſame with what *D'avila* has ob- in his 2*d* Book of the Civil Wars.

4*ly.* He can make neither Peace nor War but by the Advice of the States General. This is acknowledg'd by *Lewis* XI as we find in *Philip de Commines* 2 *Book ch.* 14.

5*ly.* He can raiſe no Mony but by Conceſſion from the States General. We find this point thus decided by the States of 1338, with the conſent of King *Philip,* That no Taxes could be impoſed or levied on the People of *France,* without urgent and evident Neceſſity did require it, and then only by the grant of the States. *Gila Fol.* 157. *Philip de Commines, lib.* 5. *c.* 18. ſaith, with reſpect to this point: "Is there any King or Lord "on the Earth, who has Power, beſides his Demeſne, to im- "poſe ſo much as a Penny upon his Subjects, without the "Grant and Conſent of thoſe who are to pay it, except it "be by Tyranny and Violence?

6*ly.* The Kings of *France* are liable to be depoſed by the States General, in caſe they abuſe the Authority they are entruſted with.

This

This laſt Article, *viz.* of the Proceedings of the French againſt thoſe of their Kings, who abuſed their Authority, does evidently demonſtate, That the Monarchy of *France* is altogether limited, according to the Platform *Cæſar* gives us of the Government of the ancient Germans or *Francs*, who are deſcended from them. There is a paſſage, which is ordinarily abuſed, to prove that unjuſt Kings and Tyrants cannot be depoſed, wherein *Gregory* of *Tours* thus expreſſeth himſelf, to *Chilperic Lib.* 5. *c.* 19. "If any one of us who are Lords 'transgreſſeth the Bounds of Juſtice, you have the Power to 'puniſh him; but if you your ſelf do not keep within them, who 'is it can correct you? We indeed ſpeak to you, and you hear-'ken to us, if you pleaſe, and if you will not, who is it ſhall 'condemn you? except he who has ſaid, that he is Righteouſ-'neſs it ſelf. I don't believe there was ever any Author, that undertook to defend the Doctrine of Non-reſiſtance and Paſſive Obedience, who has not made uſe of this Proof: but give me leave to ſay, that they have quoted this paſſage with as much Judgment as they alledged the 75*th* Canon of the 4*th* Council of *Toledo*: for 1*ſt*. Obſerve that this is the Diſcourſe of *Gregory* of *Tours*, who was accuſed by *Chilperic*, for oppoſing himſelf to the Juſtice that Prince demanded of a Council, againſt *Pretextat* Biſhop of *Roven*, whom he accuſed of high Treaſon, and forasmuch as the Biſhops were perſwaded of his Innocence, whom they ſaw attackt by falſe Witneſſes, this *Gregory* had the Courage, to maintain that it was their Duty to make their Remonſtrances to the King concerning this matter. The King took their Deſign of remonſtrancing him for an oppoſition to the Juſtice he had demanded; whereupon *Gregory* of *Tours* made the Diſcourſe juſt now mentioned. So that it plainly appears; that this Diſcourſe only reſpects the order of Biſhops, who under that Relation, have no other way to redreſs themſelves, with regard to Kings, but only by Remonſtrances, but does not at all ſpeak of the Body of the State, who are inveſted with other Rights, in Reference to a King who undertakes to pervert Juſtice. But to make it appear that Frenchmen, at that time, did not believe, that Kings had the Priviledg, that they could not be depoſed by the States: Though they

they abuſed their Authority, we need only to conſult the Hiſtory of the depoſing of *Childeric*, Father of *Clovis*, which is ſet down by *Gregory* of *Tours*, *Lib.* 2. *ch.* 11. and approved of by him.

We find that they had preſerved this their Right by the Depoſition of another *Childeric* in the 8*th* Century, and whereupon it is obvious and natural to make theſe Reflections.

1. That the *Francs* had the Power of chooſing and depoſing their Kings.

2. That the Oath they ſwore to their Kings was conditional, and ſuppoſed their acquitting themſelves of the charge and truſt repoſed in them, and which they were obliged by Oath to make good.

3. That it is falſe that King *Childeric* was depoſed by the Authority of Pope *Zachary*, as the Papiſts have maintained; foraſmuch as that proceeding was an Act of the States General, who made uſe of their Right on this occaſion.

This is ſo true, that Pope *Zachary* himſelf laid it down as a Maxim in his Letter to the *Francs*, that this was a right inherent in the People. *Nam ſi Princeps Populo, cujus beneficio Regnum poſſidet, obnoxius eſt; ſi Plebs Regem conſtituit, & deſtituere poteſt:* For if a King, ſaith he, be obnoxious to his People, by whoſe graunt he poſſeſſeth his Kingdom; if the People conſtitute a King, they may alſo depoſe him.

If we come to the Race of *Charles* the Great, we find *Lewis* the Good depoſed by the States aſſembled at *Thionville*. The whole Proceeding whereof may be ſeen in *Baronius*, *du Cheſne* *Le Cointe*, where we may obſerve 1. That it was done with conſent of the Biſhops. 2. We ſee there an Indictment on divers Articles, which contains as many Crimes againſt the State. 3. When this Depoſition was recalled afterwards, they did annul the Acts of the former Aſſembly, not as if they had acted without Power, but becauſe they had proceeded on falſe Accuſations, and inſufficient Grounds. We find alſo the ſame Proceeding with reſpect of *Charles* the Groſs, and *Charles* the Simple.

Indeed

Indeed it was then ſo notorious, that the Power of the Kings of *France*, though they took to themſelves the Title of Emperors, was limited, the Eſtates being inveſted with part of the Soveraign Authority, that *Lewis* the Good ſolemnly avows the ſame, *Lib.* 2. *Capitul. c.* 2, & *c.* 12. We find alſo that the Clergy of *France* was ſo far convinced that the States of the Kingdom had right to diſpoſe of the Crown, for the good of the State, that when *Charles* the Bald was choſen by the Kingdom of *Lorrain* in Prejudice of the Children of the King his Brother; and that Pope *Adrian* II. wrote to them thereupon by *Hincmar* Archbiſhop of *Rheims*, threatning to excommunicate them, they ſent back this Anſwer to him by the ſaid *Hincmar*: *Petite Dominum Apoſtolicum, ut quia Rex & Epiſcopus ſimul eſſe non poteſt, & ſui Anteceſſores Eccleſiaſticum ordinem quod ſuum eſt, & non Rempublicam, quod Regum eſt, diſpoſuerunt, non præcipiat nobis habere Regem, qui nos in ſic longinquis partibus adjuvare non poſſet contra ſubitaneos & frequentes Paganorum impetus, & nos Francos non jubeat ſervire, cui nolumus ſervire, quia iſtud jugum ſui Anteceſſores noſtris Anteceſſoribus non impoſuerunt, & nos illud portare non poſſumus, qui ſcriptum eſſe in ſanctis libris audimus, ut pro libertate & hæreditate noſtra, uſque ad mortem certare debeamus.* Deſire the Apoſtolical Lord, that forasmuch as he cannot be King and Biſhop both together, and that his Anceſtors have concerned themſelves with the Eccleſiaſtical Order, which is their particular Province, and not with the Common-wealth, which is the Office of Kings, not to command us to take ſuch a one for our King, who at ſo great a diſtance, is not able to help us againſt the ſudden and frequent Aſſaults of Heathens, and to require us *Francs* to ſerve him, whom we will not ſerve, becauſe his Anceſtors never offer'd to impoſe this Yoke upon our Anceſtors, neither can we bear it, who find it written in the Holy Books, That we ought to fight for our Liberties and our Inheritance even unto Death.

We ſee alſo that he who was the Head of the Third Race, *viz. Hugh Capet*, was choſen King of *France*, notwithſtanding the apparent Rights of *Charles* of *Lorrain*, who was the next Heir of *Lewis* V. by reaſon that the ſaid *Charles* ſeemed too much

much linked to the Intereſts of the *Germans*, who at that time were Enemies to *France*, *Guil. de Nangis ad An.* 987. and others in *du Cheſne.*

Who does not know the Hiſtory of *Henry* III. who having been depoſed in *Poland*, for deſerting that Kingdom, was afterwards depoſed in *France*, by advice of the *Sorbonn*, and of the greateſt part of the States.

We may eaſily judg from theſe two Characters, that Frenchmen never were infected with the Doctrine of Non-reſiſtance: The one is, becauſe they look'd upon this Doctrine as an Error. See what *Gerſon* the famous Chancellor of the Univerſity of *Paris* ſaith of it; *Error eſt dicere terrenum Principem in nullo ſuis ſubditis, dominio durante, obligari; quia ſecundum jus Divinum & Naturalem æquitatem, & verum Dominii finem, quemadmodum ſubditi debent fidem, ſubſidium & ſervitium Domino, ſic etiam Dominus ſubditis ſuis fidem debet & protectionem. Et ſi eos manifeſte & cum obſtinatione in injuria & de facto proſequatur Princeps, tunc Regula hæc Naturalis, vim vi repellere licet, locum habet. Opuſc. adverſus Adulat. conſid.* 7. It is an Error, ſaith he, to aſſert, that an Earthly Prince, as long as his Dominion laſts, does not ſtand engaged to his Subjects in any thing; becauſe, according to the Divine Law, Natural Equity, and the true End of Dominion, as the Subjects owe to their Prince Faithfulneſs, Subſidy and Service, ſo their Prince owes them Faithfulneſs and Protection; and in caſe he doth publickly and with obſtinacy imperiouſly oppreſs them, then that natural Rule takes place, That it is lawful to repel Force by Force.

The ſecond is, that they have always with horror rejected the Abuſe that has been made of the Expreſſion in 1 *Sam.* 8. *Hoc eſt Jus Regis*, for to maintain the Tyranny of Princes. "If we will believe the Laws amongſt you Princes, (ſaith *Clau-*
"*dius d' Epenſe* to King *Henry* II.) you are Lord of our Body
"and Goods; or to ſpeak more like Chriſtians, we and ours
"are at your command. Your Majeſty ought to abhor that
"Right nothing leſs than Royal, and nothing more than
"Tyrannical, which God by the Mouth of *Samuel* did not al-
"low to Kings, but only threatned the People with, telling
"them, This ſhall be the Right of the King, *&c.* And then
"adds,

"adds, Go to now ye Dogs and Flatterers of the Court, go to, "and alledg hence-forward this Right, not Regal but Barba- "rous, but Turkish, but Scythian, or if any worse Epithet "can be invented.

I acknowledg that the Face of Affairs is very much changed since these hundred Years. The States General have not been assembled almost these Seventy Years. The Parliaments themselves, which were established by the Kings and the States General, to preserve the Rights of the States, have been forced, by the present King, to verify without any Debate, all manner of Edicts for the Imposition of Mony. But yet after all, this Change is of so late standing, that there is little appearance it should be look'd upon as a sufficient Prescription against the Interest of the State. Those French-men who have any knowledg of the Laws of the State, and its Constitution, set down the *Epocha* or Date of this Change of the Ancient Maxims of the Kingdom, to wit, the time which followed the Cessation of the Holding of the Estates General, or the Minority of *Lewis* XIII, and the Reign of *Lewis* XIV.

Let no Body imagine that the Ancient *Idea* of the Government of *France*, is quite effaced out of the Spirit of the Nation. I own, that *Lewis* XIV. by a Reign both very long and very violent, has made the *French* lose a great deal of their Courage. The Clergy of that Kingdom have, above all, endeavoured to support his Tyranny, by Maxims advanc'd and contriv'd by them for the ruin of the Protestants, with as little regard for their Country, as they have shewed Conscience in their base Panegyricks pronounced to his Honour. But however there are still in being a great number of honest Men, who adhere to those Ancient Maxims. I can at this present produce one of these from amongst the Clergy, the Learned and illustrious *M. Joly*, Canon of the Church of *Paris*, who in the Year 1663, publish'd a Book, with this title, *Important Maxims for the Education of a King*. This Man alone may suffice to prove my assertion, for he very vigorously confirms these Maxims, by the Testimony of Kings themselves, Chancellors, Mi-

niſters of State, Lawyers, and Hiſtorians of *France*, that they were always of Opinion in that Kingdom, That the King holds his Authority from the People; That the Power of Kings is Limited; That the French Monarchy is a Monarchy allay'd and temper'd with Ariſtocraſy and Democraſy; That the Kings can do nothing without the States General, which are the very ſame things, with our Parliaments; That the Judges are the Peoples Officers; That the words ſo much abuſed, *Such is our Pleaſure*, ſignify only, This is the Decree of our Courts of Judicature: That they have no Right to levy any Impoſitions, without the Conſent of the States; and many other Articles of that Nature.

CHAP.

CHAP. XV.

That the Royalty of England *never had any other form than the reſt of the Northern and Weſtern States.*

I Have inſiſted the longer to ſhew how the Royalty was limited in *France*, becauſe the moſt part of our Modern Writers, ſeem to have had in their aims to reduce our Monarchy to the Form of that Kingdom, as ſuppoſing that it would have been a moſt glorious and advantageous Thing for our late Kings, to transform them into ſo many *Lewis*'s XIV; that is to ſay, to change us into Slaves, and our Princes into Tyrants.

I ſhall ſay nothing of the Royalty in *Scotland*, nor of the Bounds have been always ſet it by the Fundamental Laws of the State. There has been lately ſo much writ concerning this Matter, to juſtify the Proceedings of the Convention of that Kingdom, that it would be of no uſe to repeat it here.

And for the ſame reaſon I ſhall excuſe my ſelf of the trouble of treating what concerns the Limitation of the Royalty in *England* ſo largely, as the Subject ſeems to deſerve: however what I ſhall ſay will be ſufficient to make it appear, that Royalty has been always on the ſame foot in that Kingdom, as it is ſtill in the other Weſtern Kingdoms.

If we conſider the moſt remote times that Hiſtory gives us any account of, we ſhall find that the *Saxons*, as to the Power of their Kings, followed the Example of the Ancient *Germans*, whoſe Authority, if we may believe *Cæſar* and *Tacitus*, was altogether limited and reſtrain'd.

We find in the *Mirror of Juſtices*, cap. 1, 2. that the firſt *Saxons* created their Kings, that they made them take an Oath, and that they put them in mind that they were liable to be judged as well as their meaneſt Subjects.

After that the Right of Succeſſion was received in *England*, yet it never deprived the Engliſh People of the Right of chooſing their Kings. This is evident from the Form of the Coronation publiſhed by *Hugh Menard*, at the end of the Book of Sacraments of St. *Gregory*, p. 278. which Form was as follows. After they had made the King promiſe to preſerve the Laws and the Rights of the Church, we read theſe words: *Deinde alloquantur duo Epiſcopi populum in Eccleſia, inquirentes eorum voluntatem, & ſi concordes fuerint, agant gratias Deo Omnipotenti, decantantes Te Deum laudamus?* "Then let two Biſhops "ſpeak to the People in the Church, and demand their Will and "Pleaſure, and in caſe they do agree, let them give thanks to "Almighty God, ſinging, *We praiſe thee, O Lord.* And, *pag.* 269, & 270, "We pray thee moſt humbly to multiply the gifts of "thy Bleſſings, upon this thy Servant, whom we chuſe to be "our King, *viz.* of all *Albion* and of the *Franks*. That the Kings of *England* are as well bound by their Oath, as their Subjects, appears by the confeſſion of *Henry* III, upon occaſion of one of his Councellors of State, pretending, that he was not obliged to preſerve the Liberties of the Nation, as being extorted from him, expreſſing himſelf in theſe terms recorded by *Mat. Paris* under the Year 1223. *Omnes libertates illas juravimus, & omnes adſtricti ſumus, ut quod juravimus obſervemus*, pag. 219. All theſe Liberties we have ſworn to, and we are all bound to obſerve and make good what we have ſworn. Engliſh Men were always ſo well perſwaded of this Truth, that in their depoſing of *Richard* II, they thought they had done enough to prove, That the King had forſworn himſelf by the Oath he had taken, having broken ſeveral of the Articles he had promiſed to his Subjects by Oath to obſerve, as we may ſee in the Acts of his Depoſal recorded in the Chronicle of *Knighton*.

James the Firſt was convinced of this, when he told the Parliament of 1609. the 21*ſt* of *March*, "That the King is bound "by a double Oath, tacitly, as being King, and ſo bound to "protect his People and the Laws, and expreſly by his Coro-"nation Oath, ſo as every juſt King is bound to preſerve "that

"that Paction made with his People by his Laws, framing "the Government thereunto; and a King leaves to be a King, "and degenerates into a Tyrant, as soon as he leaves off to "govern by Law.

For what concerns the Laws, we find that the Kings alone had not the Authority of making them. King *Edwin* publiſhed his Laws, *Habito cum Sapientibus & Senioribus Conſilio*, with Advice of the Wiſe Men and Elders. *Ina* King of the Weſt Saxons did the like. The Laws of *Alfrede* were made after the ſame manner, *Ex conſilio prudentiſſimorum, atque iis omnibus placuit edici eorum omnium Obſervationes.*

As for the Government of the State, we find that the Parliaments met, and that their Meetings were fix'd once a Year by *Alfred*; which was renewed by *Edward* II, by two Laws. Moreover the King was obliged to aſſiſt at them, in caſe he was not ſick; and nothing but his Sickneſs could diſpenſe with his Attendance.

That Engliſh-men never believed that the King of *England* could violate the Laws, and overturn the State at his Pleaſure, without making himſelf thereby liable to puniſhment, clearly appears from the Laws of St. *Edward*, and by the manner of holding Parliaments, confirmed by *William* the Conqueror, and printed by the care of *Dom. Luc. D'achery*, in the 12 Tome of his *Spicilege*.

Sure it is, that we clearly find theſe three things, 1ſt That by the Agreement and Conſent of King *John*, upon the Complaints made againſt him by the whole State, there were choſen 25 Barons, with Power to repreſent to the King his unjuſt Oppreſſion of the Nation, and to oblige him by force of Arms to redreſs them, which he himſelf publiſhed by his Letters Patents in the Year 1215. which piece was publiſhed by *Dom. Luc. D'achery*, in the old Norman Tongue. *Spicil. Tom.* XII. p. 583, 584, 585. as it is to be read in *Matthew Paris ad An.* 1215.

Secondly,

Secondly, We find that the opinion of the Engliſh Nation of old was, That they could not only reſiſt their Prince, which abuſed his Authority, but wholly deprive him of it, by driving him and his wicked Councellors out of the Kingdom; as we ſee in *Matth. Paris*, in the Year 1233, where he relates, that *Henry* III, having call'd a Parliament, upon the Complaints that came in from all Parts againſt his Miniſters, and the Strangers, whoſe Service he made uſe of in the management of the Affairs of the Kingdom, the Members of the ſaid Parliament perceiving that they could not with ſafety meet together, refuſed to come up; *Denunciantes Regi per nuncios ſolennes, quatenus omni dilatione remota ejiceret*, by ſolemn Meſſengers requiring the King, that without any delay he ſhould turn out thoſe Strangers.

3*ly*, They judged that if the Sword of St. *Edward*, called *Curtana*, ſignified, that the King reſerved to himſelf the Right of exerciſing Juſtice againſt Delinquents; yet he was liable to the ſame Penalties with private Perſons, whenever he tranſgreſs'd the Laws of the State, whereof he was the Keeper and Defender, as the ſame *Matth. Paris* explains it in the Life of *Henry* III. much after the ſame manner as *Aurelius Victor* reports in the Life of *Trajan*, That that Emperor underſtood the Ceremony of delivering the Sword to the Prefect of the Pretorium.

Surely if we conſider our Hiſtory, we ſhall find,

1. That the Kings alone never had the Power of making Laws.

2. That they had no Power to lay Taxes on the People.

3. That they had not always the Power of making Magiſtrates.

4. That they had not the Right of waging War, without the Advice of Parliament, as is obſerved by *Philip de Commines*, Lib. 4. cap. 1.

5. That as they were choſen by the People, they had alſo Power to depoſe them. *Nennius* the moſt ancient Engliſh Hiſtorian after *Gildas*, tells us, That *Vortigerne* was depoſed by *St. Germain*, and the Council of the *Britains*, becauſe he had married

married his own Daughter, who placed his Son *Vortimer* upon the Throne. *Edward* II. *Richard* II.

6. That the States have cut off the Succeſſion, may be ſeen by *Henry* VII.

Indeed we find that our Ancient Lawyers, our Miniſters of State, and our Kings, who of all Men ought well to underſtand the Form and Conſtitution of our Kingdom, were ſo far from believing that the Royalty in *England* was an Abſolute and Unlimited Government, that they have expreſly declared that it is a Government bounded by Fundamental and Eſſential Laws, and compoſed of a mixture of Monarchy, Ariſtocracy, and Democracy. See how *Bracton* expreſſeth himſelf to this purpoſe, *Lib.* 2. *c.* 16. *Fleta l.* 1. *c.* 17. *In populo regendo Rex habet Superiores, Legem per quam factus eſt Rex, & Curiam ſuam, viz. Comites & Barones: Comites dicuntur quaſi Socii Regis, & qui habet Socium habet Magiſtrum; & ideo ſi Rex fuerit ſine fræno, id eſt ſine Lege, debent ei frænum ponere.* In Ruling the People, the King has above him the Law, by which he is made King, and his High Court, *viz.* the Earls and Barons; Earls are ſo called as being the King's Companions; and he who has a Companion, has a Maſter; and therefore if the King be without Bridle, that is, without Law, they muſt bridle him.

Chancellor *Forteſcue* ſaith, "That the King cannot alter the "Laws of his Kingdom, for he governs his People, not only "by a Regal, but a Political Power; when it is ſaid the Prince's "Will has the Force of a Law, this (ſaith he) is to be under-"ſtood of a Regal or Abſolute Power, from which a political "Power much differs, for ſuch can neither change the Law, nor "charge the People with new Impoſitions, againſt their "Wills.

This is a thing ſo notorious that *Philip de Commines* has taken notice of it in his Memoires, *Lib.* 4. *cap.* 1. and elſewhere; as alſo *Polydore*, lib. 11.

Neither have thoſe only, who have expreſly treated of the Government of *England*, as Secretary *Smith*, conſider'd our Monarchy as a Government mix'd and bounded; but *Charles* I. himſelf ſpake of it in theſe terms: "There being three "kinds

"kinds of Government, absolute Monarchy, Aristocracy, and "Democracy, and all having particular Conveniences and In- "conveniences; the experience and Wisdom of our Ancestors "hath so moulded this out of a mixture of those, as to give "this Kingdom the Conveniences of all three, without the In- "conveniences of any one, as long as the ballance hangs even "between the three Estates, and they run jointly in their "proper Channels. The ill of absolute Monarchy, is Tyran- "ny; of Aristocracy, Faction and Division; of Democracy, "Tumults, Violence, and Licentiousness. The Good of Mo- "narchy is uniting a Nation under one Head; the good of "Aristocracy, is the conjunction of Counsel in the ablest Per- "sons for the Publick Good; the good of Democracy, is "Liberty, and the Courage and Industry which Liberty begets. "The Lords being trusted with Judicatory power, are an Ex- "cellent Skreen and Bank, between the Prince and the People, "by just Judgment to preserve the Law: wherefore the "Power of punishing is already in your hands according to "Law.

Let any one judg after all this, whether our Ancestors ever entertain'd any of those pernicious Maxims, maintain'd by some of our Modern Divines, Maxims that have been the fruitful Mother of Tyrants: *viz.* That Princes can dispose of the Goods, Body, and Lives of their Subjects at their pleasure; That they are not subject to Laws, or to give any Accompt; That their Succession to the Throne, is by Nature and Generation, and not at all by the Authority or Approbation of the States; That neither their Merits or Demerits can be brought into consideration, to alter any thing about the Right of their Succession, which is unalterable, That without precipitating our selves into eternal Condemnation, we may not oppose their Designs, though directly and openly level'd at the Ruin of the State, and the Change of Religion: In a word, that they may commit all manner of Injustice and Violence they please, and that safely and securely, because none but God alone can punish them.

CHAP.

CHAP. XVI.

An Answer to some Difficulties moved against this Truth.

After having set this Matter in so clear and evident a Light, it is not without some Shame and Reluctancy that I make a stop to answer some insignificant Difficulties, which those who defend the unlimited Power of the Kings of *England*, oppose, to the proofs I have alledged. However such as they are, I am willing to consider them, that I may rid the Makers of them, from the least pretext of continuing any longer in so gross and dangerous an Error.

They alledge in the first place the Title of *Imperial* given to the Crown of *England*, which, in their Judgments, seems to equalize our Kings with the Roman Emperors, and to attribute an absolute Empire or Dominion to them: concerning which I have already shewed, that tho this Title were well grounded, yet the consequence they draw from thence would be null, whether we consider the antient Roman Empire, or whether we consider the Empire, as it is now in *Germany*.

I add here for a further clearing of this Matter, that the same thing happened to the Kings of the West, with regard to the Emperor of the West, as befell the other Kings, who rose after the Destruction of the Roman Empire, and to the Emperor of *Germany*, with respect to the Emperors of the East. The Emperors of the East, as appears from the Embassy of *Luitprand* at *Constantinople*, could not endure that other Princes should take upon them the Title of (βασιλεῖς) Kings, or Emperors, believing that the Name of Kings, left them in some dependence upon the Empire of the East: this obliged the Em-

perors of the West, to take upon them the Title of Emperor, to intimate their independency upon the Princes of the East. Which Title the Emperors of the West having afterwards made use of, as a pretence, to raise themselves above the rest of the Princes of *Europe*, the Western Kings did the same which the Emperors of the West had done before, to assert their Independency.

For not only the Kings of *England*, but some other Western Kings, have taken upon them the Title of Emperors.

Alphonsus VI, King of *Spain*, took upon him this Title by a Concession from Pope *Urban* II, because he had suppressed the Mosorabick-Office: *Alphonsus* VII, and VIII, assum'd the same Titles, and *Alphonsus* VIII, was Crowned in that quality by *Raymond* Arch-Bishop of *Toledo*, in the Church of *Lions*, with the consent of Pope *Innocent* II, as is reported by *Garibay lib.* 8. *hist. cap.* 4. We find that *Peter de Clugny*, writes to this *Alphonsus*, as Emperor of *Spain*, *Epist.* 8. And long time before these Princes, it is certain that the Kings of the *Goths*, since *Richaredus*, had taken to themselves the Title of *Flavians*, in imitation of the Roman Emperors; as may be seen in the Councils of *Toledo*. Yet *Philip* II, having demanded this Title in 1564 of Pope *Pius* IV, it was refused him.

The Kings of *Lombardy* had assum'd the Title of *Flavians*, even since *Autlaric*, according to the Account given us by *Paul Diacon. lib.* 3. *cap.* 8, which they did to shew, that they were Emperors in their own Lands and Territories, and that they acknowledged no Soveraign or Superior.

And it seems that in Process of Time, some Western Kings affected that Title for the same reason; and were the rather perswaded so to do, because some Canonists and Lawyers, have impudently maintained, That the Kings of *Spain*, *France* and *England*, were Subjects of the Emperors of the West. *Glossa in cap. Venerabil. de Elect. in verbo transtulit, & in caput Venerabil. qui filii sint legitimi. Bartolus in caput hostes ff. de captivis. Alciat. lib.* 2 *disjunct c.* 22. *Baldus in cap.* 1 *de Pace, juramento servando in usibus Feudorum.* Tho he contradict himself, by asserting

ing elſewhere That the King of *France* is not ſubject to the Emperor.

And thus much for the firſt Illuſion ſome make uſe of to perſwade us that the Kings of *England* poſſeſs the ſame Rights as the Emperors. A ſecond which ſeems to have ſome more Ground is this: They ſay that as the Emperors that were after *Veſpaſian*, had the Right to divide the Empire, and to ſettle it by their Wills on their Heirs, the Kings of *England* having done the like; it appears thereby, they were in Poſſeſſion of the ſame Right the Emperors had: to this purpoſe they alledge the laſt Will of *William* the Conqueror, in favor of his Son *William Rufus*.

But nothing can be more vain than this Objection.

1. We cannot deny, but that the Election of Kings took Place, during the Reign of the *Saxons*; not that they did it with that Freeneſs, as to prefer the Uncle before his Nephew, that was under Age 'tho the Kings Son, and the youngeſt Brother before the Eldeſt.

2*ly*, It is true that *William* the Conqueror did act in an extraordinary manner, in diſpoſing of his Kingdom in Favor of *William Rufus*, in the ſame way as one diſpoſeth of a Conqueſt (and this in prejudice to *Robert* his Eldeſt Son) as was alſo done by *William Rufus*. But theſe two Princes dying without Heirs, *Henry*, who had Married the Daughter of King *Alexander* of *Scotland* who had the Rights of the *Saxon* Kings, and who in Conſideration of that Marriage, renounced the Rights he might pretend to *England*, as heir Preſumptive of the *Saxon* Kings, having obtain'd the Government by the Right of his Wife, the Laws recovered their Strength, and Things returned to their antient Channel, as they were in the time of the *Saxons*. So that it appears that it is Folly for any one to imagine that the Kings of *England* may alienate their Eſtates, as a private Perſon can alienate his Inheritance. This was evident in the caſe of King *John*, who was oppoſed by the whole State, for pretending to ſubject the Crown of *England* to Pope *Innocent* III.

And indeed if we conſider the Thing in it ſelf, and according to the unanimous Opinion of all Lawyers, theſe laſt Wills can really be of no Force, without the conſent of the States, to authorize them, as we find that the ſame did intervene in both the fore-mentioned Caſes. The reaſon whereof is invincible, foraſmuch as all States do not conſider their Kings as Proprietors of their Kingdoms, but only as publick Miniſters, who are intruſted with a Juriſdiction and Adminiſtration for the Good of the publick. And this is the Title by which even Conquerors themſelves are at laſt obliged to hold their Authority.

They tell us in the 3*d* place, that the Kings of *England* entitling themſelves Kings *by the Grace of God*: it appears that their Power being come from God, cannot be limited by their Subjects, over whom God has ſet them. A wonderful way of arguing, and never known till theſe our Times: at leaſt, it is evident, that he who has defended *Nicholas de Lyra* againſt *Burgenſis*, hath made a very different uſe of theſe words, *Dei Gratia*, by the Grace of God, wherewith the Kings of the North preface their Titles, from what ſome now a days make of it. For he maintains that it is the Character of a limited and temper'd Government: ſee how he expreſſeth himſelf upon the 8. *ch.* of the 1 Book of *Kings*. *Titulus Imperatoris modo regendi vitiato* (that is to ſay, *illimitato*, as he expreſſes himſelf before) *contradicit*; *nam titulus ejus eſt*, N. Dei gratia Romanorum Rex & ſemper Auguſtus, *hoc eſt Reipublicæ non privatæ accommodus. Ita & aliorum Regum Proteſtationes ſunt ſub Dei gratia quæ vitiatum Principatum non admittit.* The very Title of the Emperor, ſaith he, is a Contradiction to an Arbitrary and Unlimited kind of Government; for his Title is, N. *by the Grace of God, King of the* Romans, *always* Auguſtus (that is enlarger of the Empire) which implies that his Government is accommodate to the Common good and not his Private Intereſt. So likewiſe we find that the Proteſtations of other Kings are under *Dei Gratia* (the Grace of God) which doth not admit of Arbitrary Government.

There

There remain but two difficulties more; the first is this, Several Members of the Church of *England* having perswaded the People, that a necessity was laid upon them to suffer all from the Hands of their Kings; The Kings of *England* have accordingly usurped those Rights, and were actually in possession of them, when the same began to oppose themselves to King *James*; this is that they call a right of Prescription. They consider the State, as having lost its Liberty, since their consenting to the Establishment of Tyranny, and consequently having no right to attempt any thing towards the Recovery of it.

But I desire those who fain would obtrude this Delusion upon others, as they have upon themselves, to consider,

1. That known Maxime of Right, *Possessor malæ fidei non præscribit*, An unjust Possessor makes no Præscription. Indeed if this be true, That a Man needs only usurp the Goods and Rights of another, to make himself the lawful Master of them; Robbers, Usurers, and those who by abusing of the Law deprive others of their Rights, will be found to be of the best and most thriving Trades in the World. If this be so, the Church of *Rome* and the Pope, by the Possession they have been in for so many Ages, must carry it by Prescription, to hang, burn, and massacre; neither can any one oppose himself against their just Title.

2. They ought to consider that if Kings be accounted Minors or under Age, because they cannot alienate their Dominions, as being only granted them for the good of the State, the People are so, on a much better Title, and Prescription can never prejudice them.

I know it is a Maxime in Law, *Prætor cum injustè judicat, jus dicit*; that a Judg, though he judges unjustly, his Judgment stands good in Law, and accordingly must be obey'd: from whence some might conclude, That the most unjust Kings cannot

not be contradicted, and that it is unlawful for any to oppose themselves to their Decisions. But those who should make this Objection, probably would not take notice of the Consequence of it. It is for the Interest of the Society, that the Judgments pronounced by the ordinary Judges should be valid, though some of their Judgments may be unjust: but no body ever believed, that this Maxime authorizeth the Magistrate, either Subaltern or Soveraign, to tread under-feet the Laws, and to make publick Profession to judg all things according to their fancy. 2*ly*. 'Tis a constant truth, That Kings could never justly touch the Peoples Rights, they being commissionated neither by God nor Man to judg what be the Rights of the People, and having no more right to deprive them thereof than a party at Law, has right to deprive his party of the Right that justly belongs to him.

CHAP.

CHAP. XVII.

An Answer to the last Objection.

After all that hath been said, I cannot suspect that any should make an Objection, that has so little Appearance of any Probability, as is that which is the 2*d* of those that remain to be examined by me; some suppose their conceit to be of some weight, who urge the Acts of Parliament under King *Charles* II, as destructive of this form of the English Government. The Words are these; *That it is not lawful on any Pretence whatsoever to take up Arms against the King*, &c. Indeed it cannot be denied but that these Words seem to suppose, that those who swear to them, cannot believe it is lawful to take up Arms against the Kings of *England*, howsoever they may behave themselves, nor by any opposition to hinder the overturning of the Laws and Government. We may well acknowledg that Power to be unbounded, which it is not lawful to oppose by force of Arms; now these Acts of Parliament declare that it is not lawful to resist the King; wherefore the King of *England* must be supposed an unlimited and absolute Monarch, and by Consequence we must conclude, that the Government of *England* is wholly changed and destroyed; so that whatsoever we have alledged in the foregoing Discourse, can only be made use of as a History of what is past, but not as a Rule or Precedent for what is to come.

This conceit is so unreasonable, that it seems scarce worth the pains to stop at it; however I shall endeavour in few Words to satisfy those who seem unwarily to be taken in the Snare, which the Malice of a Popish Court had laid for them.

1*st*. They must know that the Fundamental Laws of any State, are of the Nature of Contracts, Pactions and Capitulations,

lations, which according to the common opinion of Lawyers are irrevocable. *Buxtorf. in Bull. aurea cap.* 1. § 7. whence it follows, That all Oaths that are taken againſt Capitulations of this nature, may be Sins to thoſe who take them, but cannot oblige them, as being unlawful Oaths.

2*ly*. They cannot ſuppoſe that the Parliaments of *Charles* II did ever think of repealing theſe Fundamental Laws, without accuſing the Members that compoſed them of having been prevaricators and betrayers of the Intereſt of their Country, by changing the limited Monarchy into a true Tyranny.

3*ly*. They cannot do this Injury to theſe illuſtrious Aſſemblies, without caſting the ſame Blemiſh upon the Biſhops, in the Houſe of Lords, during thoſe Seſſions of Parliament, and making them altogether odious either for their Stupidity, or for their Malice: for their Stupidity, if imprudently they gave their conſent to Laws made on purpoſe to change the Kingly Government into Tyranny; or for their Malice, if they wilfully betrayed the Intereſt of the State, though they knew well enough what muſt be the end and aim of theſe Regulations. I deſire theſe Gentlemen to make ſome Reflection on this truth. Is it poſſible they ſhould have no Conſideration at all, either for the Reputation or Conſcience of their Anceſtors. They have ſhewed themſelves ſo jealous of a change in the form of the Government, by making of a ſucceſſive State, an Elective one, and yet they ſuppoſe that the Parliament and the Biſhops that ſat in them have in ſport changed the form of the Government, by making it of a limited Royalty, to become an abſolute and unbounded Monarchy.

4*ly*, They muſt needs accuſe theſe Parliaments of a ſtrange Folly; for theſe Gentlemen ſuppoſe that the Diſorders which then ruled in the State, obliged the Parliament to reſtore *Charles* II. They ſuppoſe that the Anarchy and various Sects which had the upper hand before his recall; making wiſe Men not without cauſe to apprehend the Ruine of the Proteſtant Religion, as well as the Overthrow of the State, they thought them-

themſelves obliged to employ all their ſtrength, for reſtoring of *Charles* II. as ſuppoſing him a good Proteſtant and a King whom his Adverſities had made wiſe, in hopes of being governed by him according to the ancient Laws of the Kingdom. And yet after this they will perſwade us, That the Parliament thought it fit and reaſonable, to deſtroy the Nature of the Royalty in *England*, by making it Miſtreſs of the Laws, and authorizing it to deſtroy the Proteſtant Religion, whenever the Popiſh Faction ſhould think fit to have it done.

5*ly*. They muſt accuſe theſe Parliaments of the commiſſion of a horrid piece of Imprudence, in attempting upon the Liberty of the People: For if this were indeed their Deſign, were they not obliged at the ſame time to repeal all the other Laws which reſtrain the Power of the Kings of *England?* For we know that a Law cannot be valid nor derogate from other Laws, except in the ſaid Law expreſs mention be made of the ſaid Derogation with a Notwithſtanding to the Reglements ſet down in other Laws that are in Authority on that Subject. *De Decimis c. nuper.* Ought not they alſo in like manner to have declared, and that very preciſely too, that they diſpenſed *Charles* II from keeping his Coronation-Oath, and to have ſet down in very diſtinct terms, that in caſe the King ſhould think fit to call in an Army of French Dragoons to raviſh their Wives and Daughters, and to force all his Subjects to change their Religion, they do not think it lawful to take up Arms againſt him or them, for to repel their Violence.

6*ly*. They are to take notice that *Charles* II did never conceive that thoſe Acts had changed the Government of the State. Do we not know that he offered to the Parliaments of *Weſtminſter* and *Oxford*, to impoſe ſuch Conditions on the D. of *York*, as the Parliament ſhould judg neceſſary, provided only the Succeſſion might be aſſured to him: now could any thing be more ridiculous and extravagant than this Propoſition of the King, had he believed that the Acts already paſt in his Favour, had given him and his Succeſſors a Right to overturn all, without being able to be challenged or oppoſed by any one for ſo

doing? They themſelves did ſuppoſe the ſame thing, and went upon that Ground; what elſe could be their meaning in Crowning *James* II, if they ſuppoſed that he was in full and rightful Poſſeſſion of the Government by virtue of the Succeſſion, without being obliged to take the Oaths, by which the Kings of *England* oblige themſelves to keep the Laws of the State.

7*ly*. They ought to take notice, that they themſelves ſuppoſed that the Fundamental Laws of the State were not aboliſhed. I don't ſpeak here of thoſe loud Murmurs that were heard every where, when *James* II by an Act of his Council, of his own Authority raiſed the ſame Sums, which had been granted to *Charles* II which he could not do without the Authority of Parliament; nor of the Complaints that were generally made when he turned out my Lord *Clarendon* from being Lord Deputy of *Ireland*, baniſh'd ſeveral Proteſtant Lords out of his Council, and put Papiſts into all Offices whether Civil or Military. I only take notice here of the Petition preſented in the Name of the Clergy by the ſeven Biſhops upon occaſion of reading the Declaration for Liberty of Conſcience; for had they been of another opinion, with what pretence of reaſon could they have complained of *James* II, governing with an Arbitrary Power, and his diſpenſing with the Laws? Why in their Petition did they alledg thoſe Acts of Parliament which had condemn'd that Power in 1673, when *Charles* II publiſhed his Proclamation for Liberty of Conſcience. Theſe Acts of theirs, upon this Suppoſal, could not be accounted of otherwiſe, than as Acts of Rebellion, nor could they be made uſe of with a good Conſcience, after they had been convinc'd that the Fundamental Laws being repealed and aboliſhed, they were now ſubject to an arbitrary and unbounded Government.

Indeed we cannot enough commend the Conſtancy of the Clergy and thoſe worthy Prelates, who refuſed to read the Declaration of *James* II for Liberty of Conſcience: that Declaration being grounded upon the Power he attributed to himſelf

ſelf of diſpenſing with the Laws. But on the other Hand neither can we imagine any more convincing Proof to make out that at that Time they did not conceive, any more than the whole State, who ſo generally applauded them, that they themſelves, as well as the whole State, had caſt themſelves headlong into Slavery by their Oaths, becauſe the Power of the Kings of *England* was become unbounded and Arbitrary.

In a Word, how ample an extent ſoever theſe Gentlemen may give to the Oath they have taken in purſuance of an Act of Parliament in the 13 Year of *Charles* II, they muſt remember one Thing which is always ſuppoſed, which is the natural Condition of all Oaths, *rebus ſic ſtantibus, c. ad naturam*, Things continuing in the ſame State; for indeed as ſoon as things have changed their Nature, or that Circumſtances are altered, there remains no more Obligation in Caſes, where exceptions are naturally ſuppoſed. I am bound to Obey my Father in all Things, this being what the Scripture expreſly teacheth me; but I am not bound to Obey him any farther, than he Acts like a Father, neither am I oblig'd to keep this Command of obeying him in all Things, but only ſo far as the Things enjoyned by him are juſt and lawful. I am bound to obey the King according to the Laws, neither may I lawfully reſiſt Him, in his executing of the Laws, or upon any pretext whatſoever take up Arms againſt him: but if in ſtead of governing according to Law, he uſeth his utmoſt Endeavours to overthrow the Society, by deſtroying the Laws which are the Band of it, then all the Oaths I have taken are no longer of any Force, 'tis my Right to Endeavour to preſerve the Society, which he goes about to overthrow, and to oppoſe his Violence by taking up Arms againſt him, and to put a ſtop to the unjuſt Proceedings of a Prince, who declares himſelf an Enemy to the State, by the ways which providence affords me for my Security.

But if after all theſe Conſiderations, theſe Gentlemen will ſtill maintain, that they have taken theſe Oaths in ſo ſtrait a Senſe, that nothing is capable of ſatisfying their Conſciences; we have great Reaſon to be Aſtoniſhed, how it was poſſible

that Men of ſo Tender and Delicate a Conſcience, could take ſuch Oaths, which taken in their Senſe do viſibly overturn both the State and Religion. Indeed there is no need of any ones being a Prophet to make him conceive, that they were rather obliged in Conſcience to refuſe the taking of ſuch Oaths, and to fly to the End of the World, rather than take them, than they are bound to keep them, with the hazard of the utter Ruin of their Native Country and their Religion; or ſee them Periſh without having any Power to Defend them, as they are obliged by the Laws of nature, and by all the Duties of the Society and Religion.

It has already been made out by ſeveral Writings, that God ſeeming to ſpare and wink at the weakneſs of thoſe who believ'd themſelves thus faſt bound and tied by their Oaths, and deſtin'd to become Victimes to Popery and Tyranny, has been pleas'd happily to deliver them from the trouble wherein they had involed themſelves in ſending them a Deliverer, whoſe Rights, in a War which *James* II. unjuſtly wageth againſt him, are above all thoſe Difficulties, which ſeem to be matter of Scruple to them: ſo that it is not needful for me to inſiſt any longer on this Matter.

CHAP.

CHAP. XVIII.

A Reflection on some Remarks made out in this Treatise.

I Am perswaded, that every equal Reader cannot but acknowledg, that to judg aright of Things, the Proceedings of *England*, with respect to *James* II. have been the most just and lawful that could be.

The Things I have made out in this Treatise, are summarily contain'd in the following Articles.

1. That the Constitution and Establishment of any Government, is the Effect of the Original Consent of the People, though the Authority of the Magistrates be a Thing established by God.

2. That this Establishment supposeth the Subsistence of the Laws, which are the End of the Government in the Design of God; for indeed Kingdoms without Justice, are no better than great Robberies, as St. *Austin* calls them, *De Civit. Dei, Lib.* 4. *cap.* 4.

3. That these Fundamental Laws, for the Subsistence of the Society, are a Bond which so strictly ties the Soveraigns, that nothing is able to dispense with their Obligation to them.

4. That when the Soveraigns do violate them, they break the Ties, whereby their Subjects are bound to their Lawful Authority.

5. That the Subjects can never be deprived of their Right to hinder the Ruin of the Society, and of the Laws, for the conservation of which only they have put their Rights into the Hands of the Prince.

6. That there was never any State that subsisted under other conditions than these.

7. That

7. That *England* in particular, and *Scotland*, have always had this Right.

Now these Things supposed, it is evident,

1. That *James* II. has forfeited all his Rights to the Crown, even before his Desertion.

2. That the Lords and People justly took up Arms against him, to oblige him by Force to reform the Disorders he had caused.

3. That the States had Power, without any regard had to Him, to raise the King and Queen to the Throne.

4. That the Subjects are more than enough freed from their Oath of Allegiance to King *James*.

5. That they have Right, and are under Obligation, to take up Arms, and oppose themselves against *James* II. and to maintain the Authority of the King and Queen.

6. That those who oppose themselves to this, are declared Enemies of the State, and of our Religion, and the Authors and Abettors of Tyranny and Popery.

7. That those who pretend themselves scrupulous in these Points, are the Cause of the Division, and consequently of the Ruin of the State and Religion, whereby they grievously sin against God, and therefore are obliged in Conscience to repent and make amends for the Mischief their Division has caused.

The thing is very evident, and forasmuch as it is of the highest importance for their Salvation, I beg of them well to weigh and consider these following Articles, and witness their Repentance in all these respects.

1. Then they ought to repent, for that they making profession to have so strong an Affection for *James* II. they have made him fall upon the Designs of changing the Government into a Despotical and Arbitrary Power, and thus by their Maxims have advanced and precipitated his Ruin. They are the Men who have made him conceive the Design of establishing a Tyranny in *England*; they have given birth to his hope of being able to compass it according to his Hearts desire, and his Ruin proceeding from the opposition that was made against

againſt theſe his Deſigns, 'tis them he may thank for all the Miſeries into which he is plunged; and conſequently they have great reaſon to repent, for having precipitated his Ruin by their falſe and deceitful Foundation. See what *Gerſon* ſaith, *In opuſc. contr. Adulat. conſid.* 10. *Clericus ille Regem ſuum aut Principem amaret minimè, qui perverſas, & tales vellet dare doctrinas, aut toto poſſe & ſcientia illas non impediret——quia non eſt modus certior, quo Rex aut Princeps ſe perderet in corpore & in anima, totamque ejus damnationem, quam habendo falſas tales opiniones, & eas opere exequendo. Cur? Quoniam Dominatio ſua in Tyrannidem verteretur & in infidelitatem.* That Clergy-man would be far from loving his King or Prince, who ſhould teach him ſuch perverſe and falſe Doctrines, or that with all his Power and Skill ſhould not oppoſe them; becauſe there is not a more ſure way for a Prince to deſtroy himſelf, Soul and Body, and to procure his total Damnation, than by entertaining ſuch falſe Opinions, and reducing them into practice. Why ſo? Becauſe his Government by this means would be changed into Tyranny and Perfidiouſneſs.

2. They ought to repent, for their having contributed ſo much towards the eſtabliſhing of Tyranny, not only becauſe that would have deſtroyed the Publick Liberty, but becauſe his Deſign at the ſame time was, to overthrow the Proteſtant Religion, and ſubſtitute in the place of it the Idolatry, Superſtition and Tyranny of Popiſh Uſurpation. This was a thing they could not do without imitating the Conduct of the Popiſh Clergy, who ſince the Popes have undertaken to tread under their Feet the Rules of the Goſpel, and of the Church, have endeavoured to inſpire Princes with an indifferency for their Oaths, and contempt of the Laws, which are a Safeguard and Security of the Civil Society.

3. They muſt repent, at leaſt ſome of them, for having obſtinately endeavoured to hide and diſguiſe the Conſpiracies which were deſign'd for the Ruin of our Religion and Liberty.

4. They muſt repent for having writ in favour of an Opinion contrary to the Judgment of the Ancient Reformers of *England*; and for having traduc'd, as Rebels, the Proteſtant Churches beyond the Sea, for their maintaining the Maxims which the

firſt

first Reformers of *England* have Asserted, and for which they have Writ, in defence of their Protestant Brethren.

5. They must repent, for that by their Sermons and Writings they have insinuated to the People those Maxims which have put them upon betraying the Natural Rights of the Society, and in the Sequel, upon imprudently exposing themselves to betray the Interest of the Protestant Religion, which they were obliged to deliver safe to their Posterity.

6. They must repent, for having by this means encouraged the Judges to tread underfoot the Authority of the Laws, and to dispence with them, as having taught them to look upon the Laws, as the Concessions of Princes, and Acts of their Will, and by Consequence revocable at their good Pleasure.

7. They must repent, at least some of them, for having mounted to Ecclesiastical Dignities, by publickly appearing in the Lists for defence of these pernicious and tyrannical Maxims, directly level'd at the Ruin and Overthrow of our Liberty and Religion.

8. They must repent, for that their Opinions at this Day are the Causes of the present Conspiracies, Rebellions and Treasons against the Government, by which God has been pleas'd so graciously to secure our Liberty and Religion, from the inevitable Ruin wherewith they were threatned.

However, we have cause to bless God, that those who are guilty of these Sins, are but inconsiderable in their Numbers. And I ardently wish for them they may once seriously enter into themselves, and that by the Example of their Brethren, they may, for Time to come, employ all their Endeavours to make reparation for the Mischief and Scandal their Errors and Prejudices have in a great measure brought both upon the Church and State.

FINIS.

APPEN-

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THE APPENDIX

CONTAINING

I. Concilii Toletani IV. Canon. LXXV.

II. Capitula ſuper quibus facta eſt Magna Charta Regis Johannis, ex MSS. Arch. Cantuar. Fol. 14. Quæ etiam authenticè cum Sigillo extant in manibus Epiſc. Salisburienſis.

III. Diploma ſive Ordinationes Johannis Regis Angliæ, queis ſtatuit quid Nobiles, quid Plebes obſervare debeant ad pacem & tranquillitatem Regni ſtabiliendam.

LONDON,

Printed for Ric. Chiſwell. 1689.

APPENDIX.

The 75. Canon of the Fourth Council of *Toledo*.

Concilii Toletani IV.

CAN. LXXV.

AFter ſome Ordinances and Decrees made by us, with reſpect to the Eccleſiaſtical Order, and their particular Diſcipline, the laſt Reſolution taken by us Prieſts, is to enact a final Pontifical Decree for the puiſſance of our Kings, and the ſtability of the Gothick Nation, in preſence of the Great Judge of the World. For many Nations are ſo falſe and perfidious, that they make ſlight of the Oath of Faithfulneſs they have ſworn to their Kings, and tho with their mouths they profeſs Allegiance to their Prince, yet retain Perfidiouſneſs in their hearts: they ſwear indeed to their Kings, but are as ready to break it again upon occaſion, not fearing that Roll of Judgment, which brings a Curſe and manifold Puniſhments upon thoſe who ſwear

POſt inſtituta quædam eccleſiaſtici ordinis, vel decreta, quæ ad quorundam pertinent diſciplinam, poſtrema nobis cunctis ſacerdotibus ſententia eſt, pro robore noſtrorum Regum, & ſtabilitate gentis Gothorum, pontificale ultimum ſub Deo judice ferre decretum. Multarum quippe gentium (ut fama eſt) tanta extat perfidia animorum, ut fidem Sacramento promiſſam regibus ſuis ſervare contemnant, & ore ſimulent juramenti profeſſionem, dum retineant mente perfidiæ impietatem. Jurant enim Regibus ſuis, & fidem quam pollicentur prævaricant, nec metuunt volumen illud judicii, per quod inducitur maledictio multaque pœnarum

Concilio Tolet. v. cap. 7. decernitur ut hoc decretum in omnibus ſynodis peractis publicâ voce pronuncietur.

Zach. 7. c. 8.

rum comminatio ſuper eos qui jurant * in nomine Dei mendaciter. Quæ igitur ſpes talibus populis contra hoſtes laborantibus erit? quæ fides ultra cum aliis gentibus in pace credenda? quod fœdus non violandum? quæ in hoſtibus jurata ſponſio * permanebit, quando nec ipſis propriis regibus juratam fidem conſervant? Quis enim adeo furioſus eſt, qui caput ſuum manu propria defecet? illud notum eſt, immemores ſalutis ſuæ propria manu ſeipſos interimunt, in ſemetipſos ſuoſque reges proprias convertendo vires, & dum Dominus † dicit, Nolite tangere Chriſtos meos: & David, Quis, inquit, extendet manum ſuam in Chriſtum Domini, & innocens erit? illic nec vitare metus eſt perjurium, nec regibus ſuis inferre exitium. Hoſtibus quippe fides pacti datur, nec violatur. Quod ſi in bello fides valet, quanto magis in * ſuis ſervanda eſt. Sacrilegium quippe eſt, ſi violetur à gentibus regum ſuorum promiſſa fides, quia non ſolum in eos fit pacti tranſgreſſio, ſed & in Deum quidem, in cujus nomine pollicetur ipſa promiſſio. Inde eſt, quod multa regna terrarum cœleſtis iracundia ita permu-

* *ſtabilis perm.*

† *Dicat* Pſalm. 104. 1 *Regum* 26.

* *cæteris.*

falſly by the name of the Lord. What hope is there that ſuch as theſe ſhould either ſtand to their Capitulations in time of War, or obſerve their Treaties of Peace with other Nations? Or what Covenant or Contract will they not break? Or what Promiſe made to their Enemies will they keep, when they violate the Allegiance ſworn to their own Kings? For who is ſo mad as to endeavour to cut off his Head with his own Hand? This is notorious, that unmindful of their own Preſervation they kill themſelves, turning their force and violence againſt themſelves and their own Kings. And whereas the Lord ſaith, Touch not mine Anointed: *and* David, Who can ſtretch forth his hand againſt the Lords anointed and be guiltleſs? *theſe are neither afraid of Perjury, or murthering their own Princes. Sure it is, that a Promiſe, tho made to Enemies, ought to be kept: Now if we muſt keep Faith and Truth in War to our Enemies, how much more are we to keep them on all other occaſions? For it is a piece of Sacriledge for Subjects to violate the Faith promiſed to their Kings, becauſe in ſo doing they not only ſin againſt their Princes, but againſt God himſelf, in whoſe name they make their promiſe. Hence it comes that the wrath*

of

of God doth oft change and transfer many of the Earthly Kingdoms, the breach of Faith and corruption of Manners, making way for the destruction and change of the Government. Wherefore also it ought to be our great care to avoid the mishaps attending these Nations, lest we be involved with them deservedly in the same Punishment. Thus we see that God did not spare the Angels that rebell'd against him, who by their disobedience forfeited their Heavenly Mansions. Wherefore 'tis said also by the Prophet Isaiah, My Sword is made drunk in Heaven; *how much more then ought we to stand in awe, and fear the same disaster, lest by our perfidiousness we be destroyed by the same Sword of an angry God. If therefore we desire to avoid the divine wrath, and to have his severity turn'd into Favour and Clemency towards us, let us above all things with fear keep and observe to God the Religious Worship and Service we owe him, and to our Kings the Faith and Allegiance we have promis'd them: Let there not be found amongst us, as in some other Nations, any wicked contrivance of Unfaithfulness, or cunning Perfidiousness, or the horrid Crime of Perjury, or mischievous Plottings of Conspiracies: Let none*

tavit, ut per impietatem fidei & morum, alterum altero solveretur. Unde & nos cavere oportet casum hujusmodi gentium; ne similiter plagâ feriamur præcipiti, & pœna puniamur crudeli. Sic enim Deus angelis in se prævaricantibus non pepercit, qui per inobedientiam cœleste habitaculum perdiderunt. Unde & per Isaiam dicitur, Inebriatus est gladius meus in cœlo, quanto magis nos nostræ salutis interitum timere debemus, ne per infidelitatem eodem sævientis Dei gladio pereamus. Quod si divinam iracundiam vitare volumus, & severitatem ejus ad clementiam provocare cupimus, servemus erga Deum religionis cultum † cum timore; custodiamus erga Principes nostros pollicitam fidem, atque sponsionem; non sit in nobis, sicut in quibusdam gentibus, infidelitatis subtilitas impia, non subdola mentis perfidia, non perjurii nefas, nec conjurationum nefanda molimina. Nullus apud nos præsumptione regnum accipiat; nullus excitet mutuas seditiones civium; nemo meditetur interitus regum; sed & defuncto in pace principe, primates totius gentis cum sacerdotibus successorem regni

Isai. 34.

† *atque timere, & usque ad mortem custod.*

con-

concilio communi conſtituant: ut dum unitatis concordia à nobis retinetur, nullum patriæ gentis diſſidium per vim atque ambitum † oriatur. Quod ſi hæc admonitio mentes noſtras non corrigit, & ad ſalutem communem cor noſtrum nequaquam perducit, audite ſententiam noſtram. Quicunque igitur à nobis, vel totius Hiſpaniæ populis, quâlibet conjuratione vel ſtudio ſacramentum fidei ſuæ, quod pro patriæ gentiſque Gothorum Statu, vel * conſervatione regiæ ſalutis pollicitus eſt, † temeraverit, ut regem nec attrectaverit, aut poteſtate regni exuerit, aut præſumptione Tyrannicâ regni faſtigium uſurpaverit, anathema ſit in conſpectu Dei patris & angelorum, atque ab eccleſia catholica, quam profanaverit perjurio, efficiatur extraneus, & ab omni cœtu Chriſtianorum alienus, cum omnibus impietatis ſuæ ſociis: quia oportet ut una pœna teneat obnoxios, quos ſimilis error invenerit implicatos. Quod iterum ſecundo replicamus dicentes: Quicunque amodo ex nobis vel cunctis Hiſpaniæ populis quolibet tractatu vel ſtudio ſacramentum fidei ſuæ, quod pro patriæ gentiſque Gotho-

† *moliatur.*

* *Obſervatione.*
† *Tentaverit.*

amongſt us, egg'd on by Preſumption, invade the Throne, or ſtir up Seditions amongſt his Fellow-Citizens, or compaſs and contrive the Death of Kings: but when the King is departed this Life in Peace, let the Lords of the Nation, together with the Prieſts, by joint Advice and Conſent, appoint and conſtitute a Succeſſor of the Kingdom; that ſo whilſt this band of Unity and Concord is thus preſerved amongſt us, none may endeavour to make a rent in the Kingdom by force or unjuſt ways. But in caſe this Admonition prove not of ſufficient force, to correct the bad impreſſions which may be on the minds of any, and to incline the hearts of all to promote the common good; we think good to pronounce Sentence. Whoſoever therefore, either of us, or any of the People of Spain, *ſhall by any Conſpiracy or Endeavour come to break and falſifie the Oath he has taken, for the good State and Welfare of the* Gothick *Nation, and the ſafety of the King, or ſhall preſume to kill the King, or deprive him of his Royal Dignity, or by a Tyrannical preſumption ſhall Uſurp the Throne, let him be Anathema in the Eyes of God the Father and the Holy Angels, and be caſt out of the Catholick Church which*

which he has profan'd by his Perjury, and be turn'd out from all Christian Societies, together with all the Complices of his wickedness, because it is but just that they who are guilty of the same Crime should be involved in the same punishment. Which therefore we think good to repeat again; saying, Whosoever from this time forwards, either of us, or of all the People of Spain, *shall by any Conspiracy or Endeavour, break the Oath which he has taken for the good State of his Native Country, and of the* Gothick *Nation, and for the safety of the King's Person, or shall presume to kill the King, or deprive him of his Kingdom, or by a tyrannical presumption shall Usurp the Throne, let him be Anathema in the sight of Christ and his Holy Apostles, and be cast out of the Catholick Church, which he has profan'd by his Perjury, and thrust out from all Christian Societies, and as a damn'd Person be deliver'd up to the just Judgment of God to come, together with all his complices and partakers. Yea we repeat a third time, That whosoever of us, or any of the People of* Spain, *in contrivance or deed, break his Oath which he hath taken for the good Sate and Welfare of his own Native Countrey, and the* Gothick *Na-*

rum statu, vel conservatione regiæ salutis pollicitus est, violaverit, aut regem nece attrectaverit, aut potestate regni exuerit, aut præsumptione tyrannica regni fastigium usurpaverit, anathema sit in conspectu Christi, & † Apostolorum ejus, atque ab ecclesia catholica, quam perjurio profanaverit, efficiatur extraneus; & ab omni consortio Christianorum alienus, & damnatus in futuro Dei judicio habeatur, cum comparticipibus suis. Quia dignum est, qui talibus sociantur, ipsi etiam damnationis eorum participatione obnoxii teneantur. Hoc etiam tertio acclamamus, Quicunque amodo ex nobis vel cunctis Hispaniæ populis qualibet meditatione vel studio sacramentum fidei suæ, quod pro patriæ salute, gentisque Gothorum statu, vel incolumitate regiæ potestatis pollicitus est, violaverit, aut regem nece attrectaverit, aut potestate regni exuerit, aut præsumptione tyrannicâ regni fastigium usurpaverit, anathema sit in conspectu Spiritus Sancti, & martyrum Christi, atque ab ecclesia catholica, quam perjurio profanaverit, efficiatur extraneus, & ab omni communione Christianorum alienus;

† *Angelorum*

nus; neque partem juſtorum habeat, ſed cum diabolo & angelis ejus æternis ſuppliciis condemnetur, una cum eis qui eâdem conjuratione nituntur: * ut par pœna perditionis conſtringat, quos in perniciem prava ſocietas copulat: & ideo, ſi placet omnibus qui adeſtis. † Hæc tertio reïterata ſententia veſtræ vocis ‖ eam conſenſu firmate, ab univerſo clero, vel populo dictum eſt: qui contra hanc veſtram definitionem præſumpſerit, anathema, maranatha (hoc eſt) perditio in † adventum domini ſit, & cum Juda Iſchariot partem habeat, & ipſi & ſocii eorum. Amen.

* *Et*

† *Hoc tertio reïteratum ſententia veſtræ.*

‖ *Noſtram.*

† *adventu.*

tion, and the ſafety and preſervation of the King's Perſon, or attempt the life of the King, or deprive him of his Royal Dignity, or by a tyrannical preſumption ſhall Uſurp the Throne, let him be Anathema in the ſight of the Holy Ghoſt and the Martyrs of Chriſt, and be excommunicated from the Catholick Church, which he has profaned by his Perjury, and be renounced all Chriſtian Communion, without ever having any ſhare or part with the Righteous, but with the Devil and his Angels be condemned to Eternal puniſhments, with all his Partners joyn'd with him in the ſame Conſpiracy, that the ſame puniſhment of final perdition may reach all that are Complices and Partakers of the ſame guilt. Wherefore if this thrice repeated Sentence be according to the mind of all you that are here preſent, confirm the ſame with your Unanimous Voices. Accordingly the whole Body of the Clergy and People have ſaid and declared, Whoſoever ſhall preſume to do any thing againſt this your Decree, Let him be Anathema, Maranatha, that is, accurſt and damn'd at the coming of our Lord, and have his ſhare and lot with Judas Iſcariot, *both they and their Complices.* Amen.

† *Et ſacerdotes omnes ſanctam Eccleſiam.*

Quapropter nos ipſi † ſacerdotes omnem eccleſiam Chriſti ac populum admonemus, ut tremenda hæc & totiens iterata ſententia nullum ex nobis præſenti atque æterno condemnet judicio; ſed fidem promiſſam erga glorio-

In conſideration therefore of the Premiſes, we Prieſts do admoniſh and warn the Holy Church of Chriſt, and all the People, to take care that this tremendous and ſo oft repeated Sentence of Excommunication may not make any of us obnoxious to preſent and eternal condemna-

demnation, but that keeping the Faith we have ſworn to our moſt Glorious Lord, King Siſenandus, *and ſerving him with ſincere Loyalty, we may not only incline the Divine Clemency and Goodneſs towards us, but may alſo deſerve the favour of our Gracious Prince.* Amen.

We alſo with the Humility that becomes us, do entreat thee, O King, here preſent amongſt us, and all Princes thy Succeſſors for time to come, that behaving your ſelves with all moderation and gentleneſs towards your Subjects, you may in Righteouſneſs and Godlineſs rule the People by God committed to your charge, that ſo you may be able to give a good account of your Stewardſhip to Chriſt who has conſtituted you; governing your Subjects with humbleneſs of Heart, and being found in a conſtant endeavour of procuring their Good and Welfare. That none of you alone may undertake to judge of Capital Matters, or any Mans Eſtate; but that by publick conſent of the Judges and other Magiſtrates, and in an open Tryal, the Guilt of Delinquents may be made apparent, obſerving a merciful diſpoſition towards thoſe who have

Theſe qualifications of a good Prince, are moſt of them taken out of St. *Auſtin. Lib.* 5. *de Civitate Dei.*

ſiſſimum dominum noſtrum Siſenandum regem cuſtodientes, ac ſincera illi devotione famulantes, non ſolum divinæ pietatis clementiam in nobis provocemus, ſed etiam gratiam antefati Principis percipere mereamur. Amen.

Te quoque præſentem regem futuroſque ſequentium ætatum principes humilitate quâ debemus depoſcimus, ut moderati & mites erga ſubjectos exiſtentes, cum juſtitia & pietate pŏpulos à Deo vobis creditos regatis, bonamque viciſſitudinem qui vos conſtituit largitori Chriſto † reſpondeatis; regnantes cum humilitate cordis, cum ſtudio bonæ actionis. Ne quicquam veſtrum ſolus in ‖ cauſis capitum, aut rerum ſententiam ferat: Sed conſenſu publico, cum rectoribus ex judicio manifeſto delinquentium culpa pateſcat; ſervata vobis in offenſis manſuetudine, ut non ſeveritate magis in illis quam indulgentia polleatis: Ut dum omnia hæc, auctore Deo, pio à vobis moderamine conſervantur, & reges in populis, & populi in regibus, & Deus in utriſque lætetur. Sane de futuris regibus hanc ſententiam promulgamus, ut ſi quis ex

Hæc omnia de formando optimo Principe, ferè deſumpta ſunt ex Auguſt. lib. 5. *de civit. Dei,* cap. 24.

eis contra reverentiam legum ſuperba dominatione, & faſtu regio in flagitiis & facinore, ſive cupiditate crudeliſſimam poteſtatem in populis exercuerit, anathematis ſententia à Chriſto domino condemnetur, & habeat a Deo ſeparationem atque judicium, propter quod præſumpſerit prava agere, & in perniciem † *deducere.* regnum * convertere. De ſe Suintilane vero, qui ſcelera propria metuens, ſeipſum regno privavit, & poteſtatis faſcibus exuit, id cum gentis conſultu decrevimus, ut neque eundem vel uxorem ejus, propter mala quæ commiſerunt, neque filios eorum unitati noſtræ unquam conſociemus, nec eos ad honores, à quibus ob iniquitatem dejecti ‖ *provehamus* ſunt, aliquando † promoveamus; quique etiam, ſicut à faſtigio regni habentur extranei, ita & à poſſeſſione rerum, quas de miſerorum ſumptibus † *auxerant.* hauſerant, maneant alieni; præter id quod pietate piiſſimi principis noſtri fuerint conſecuti. Non aliter * *Geilanem.* & * Gelanem memorati † *Suintilanæ.* † Suintilani & ſanguine & ſcelere fratrem, qui neque in * *fide.* germanitatis * fœdere ſtabilis extitit, nec fidem glorioſiſſimo noſtro domino pollicito conſervavit, hunc igitur cum

offended, that your indulgence and mercy in ſparing may appear, as well as your Severity in puniſhing: So that all things, by the aſſiſtance of God, being adminiſtred and preſerv'd by you, with a godly Rule and Government, you Kings may have reaſon to rejoyce in your People, as well as your People in you, and that God may rejoyce in you both. And as to what belongs to all future Kings, we pronounce this our Sentence, that in caſe any of them without being reſtrain'd by the Reverence due to the Laws, ſhall by a proud Lordlineſs, being puſt up with the Royal dignity, by injuſtice, violence and oppreſſion, exerciſe a tyranical and cruel Power againſt his Subjects, let all ſuch be condemn'd and anathematiz'd by Chriſt, and be ſeparated from God, and ſubjected to his Judgments; for that he preſumed to act wickedly, and to endeavour the hurt and ruine of the Kingdom. And as for Suintilanus, *who fearing the puniſhment of his Crimes, has deſerted the Kingdom, depriving himſelf thereby of the Royal Power, we, with the Conſent of the People, have Decreed that neither he nor his Wife nor Children, ſhall ever be received by us into our Society, becauſe of the wickedneſs they are guilty of; or reſtored to*

thoſe

those Honours from whence they have been so justly cast down; and that they shall not only for ever stand deprived of the Prerogatives of the Royal Dignity, but also forfeit all the Wealth they have got by oppressing the miserable People, except only that which shall be allow'd them by the goodness of our Gracious Prince. The same Sentence we likewise pronounce against Geilanus, *the said* Suintilanus *his Brother, as in Blood, so in Crimes and Wickedness, who was perfidious to his own Brother, and has broken his Faith promised to our most glorious Lord, wherefore we also cast him and his Wife, and banish them from our Society, together with those before-mentioned, and exclude them from the Commonwealth of our Nation, and that they shall not be restored to the Possessions, which by wickedness they had gotten, except only what they may obtain from the Bounty of our most Gracious Prince, who as he is ready to enrich those that are good with bountiful Rewards, so neither does he altogether exclude those that are wicked, from his diffusive Beneficence. Now Glory and Honour be ascribed to our Almighty God, in whose name we are here Assembled, and may Happiness, Peace, and a long continued Reign be the Portion of our most Pious Lord and Lover of*

conjuge sua, sicut & † antefatos, à societate gentis, atque consortio nostro placuit separari, nec in amissis facultatibus, in quibus per iniquitatem creverant, reduces fieri; * præter id quod consecuti fuerint pietate clementissimi principis nostri: cujus gratia & bonos donorum præmiis ditat, & malos à beneficentia sua † non separat. Gloria autem & honor omnipotenti Deo nostro, in cujus nomine congregati sumus. Post hæc salus & pax, & diuturnitas piissimo & amatori Christi domino Sisenando regi; cujus devotio nos ad hoc decretum salutiferum convocavit; Corroboret Christi gloria regnum illius, * gentisque Gothorum in fide Catholica: annis & meritis protegat illum usque ad ultimam senectutem summa Dei gratia: & post præsentis regni gloriam, ad æternum regnum transeat; † ut sine fine regnet, qui * intra Sæculum feliciter imperat; ipso præstante qui est Rex regum & Dominus dominantium, cum Patre & Spiritu Sancto in Sæcula Sæculorum Amen.

† *antefactum est.*

* *præter in id.*

† *congruè non separat.*

* *gentesque.*

† *&.*

* *in sæculo.*

Christ, King Siſenand, *whoſe Piety and Devotion has call to this Aſſembly, to eſtabliſh and enact this wholeſome Decree. May the Glory of Chriſt ſtrengthen and eſtabliſh his Kingdom and the* Gothick *Nation in the Catholick Faith, and multiply his Years and Virtues, preſerving him to the higheſt old age; and may he after the Glory of his Reign here on Earth, paſs over to the Eternal Kingdom in Heaven, that he may Reign there without end, who here has Reigned well and happily by the grace and help of him who is King of kings and Lord of lords, with the Father and Holy Spirit for ever and ever.* Amen.

Definitis itaque iis quæ ſuperius comprehenſa ſunt, annuente religioſiſſimo principe, placuit deinde, nulla re impediente, à quolibet noſtrum ea quæ conſtituta ſunt temerari, ſed cuncta ſalubri conſilio † conſervare: quæ quia profectibus Eccleſiæ, & animæ noſtræ conveniunt, etiam propriâ ſubſcriptione, ut permaneant, roboramus*.

† *conſervari.*

* *& ſubſcripſerunt omnes.*

The things above written being thus decreed and determined by us, with the Conſent and Approbation of our moſt Religious Prince, we alſo have engaged never to infringe any Point thereof, but exactly to keep and obſerve the ſame; and becauſe theſe things do greatly concern the good of the Church, and the welfare of Souls, we have thought good to ſtrengthen and confirm the ſame by our particular Subſcription, that they may ſtand ratified for ever. And accordingly was ſubſcribed by all of them.

Capitula

Place this before the *Capitula*, betwixt Page 112, and 113.

AN ADVERTISEMENT Concerning the ARTICLES OF MAGNA CHARTA of King JOHN.

As also concerning

The MAGNA CHARTA *now printed in this* APPENDIX.

THESE *Articles* or *Capitula* were found in the Study of Biſhop *Warner*, late Biſhop of *Rocheſter*: They were communicated by a Gentleman of that Family to Mr. *Geddis*, and by him to the preſent Biſhop of *Saliſbury*.

There can be no reaſonable ſcruple raiſed againſt the Authentickneſs or Truth of the Writing: For firſt,

1. It is in a Hand very ancient: They that are competent judges of ſuch Antiquities, ſay, It well pretendeth to the Time of which it treateth.

2. It

2. It hath yet appendant the Seal of King *John*, without any ſuſpicion of being lately affixed.

3. In the famous Library of Sir *John Cotton*, there are now to be ſeen many private *Charters* of King *John*, which exactly agree with this, both in reſpect of the Writing, and alſo of the Seal.

4. In the Books of the Archbiſhoprick of *Canterbury*, amongſt many things there entred, of the time of King *John*, theſe *Articles* are Recorded, and were thence tranſcribed, many Years before the Original of them came into the Hand of the Biſhop of *Saliſbury*.

5. This Inſtrument is the ſame which *Matth. Paris* mentioneth, *Page* 254. by the name of *SCHEDULA*. *Archiepiſcopus Schedulam illam*, &c. "*The* "*Arch-Biſhop, with others, bringing that Schedule to the* "*King, recited before the King all the Capitula*, &c.— Which tho' the King then rejected, yet ſhortly after upon better Advice, He granted; as may be gathered from the next Page of *Matth. Paris*.

Theſe Arguments may ſatisfie thoſe, who ſince the late mentioning of theſe *Articles* in the *Paſtoral Letter* of the Biſhop of *Salisbury*, have had the Civility to doubt of the Truth of the whole matter.

1. As to the ſubſtance of theſe Articles; It is to be obſerved, that they contain ſome part of the *Rights* of the Barons, due to them by the Unwritten or Common Law

Law of the Land; which *Rights*, for more certainty, were in ſeveral Reigns drawn into Writing: And, for more obligatorineſs, into Charters, after the entrance of the *Normans*. In the time of the *Confeſſor*, they were contained in the Laws of that King. *William* the *Conqueror* confirmed (to the old, and new Barons of his Inveſtiture according to Cuſtom of *England*) the Laws of the *Confeſſor*, as appeareth by the Record in *Ingulf*, and other Teſtimonies.

2. Theſe *Articles*, or the *Laws* of the *Confeſſor*, were recognized, and by Oath re-confirm'd by *William Rufus*; no doubt, at His Coronation; or not long after. The old *Engliſh* Chronicle writeth thus, *William Rufus by his Letters Summon'd the Biſhops, Earls and Barons to St.* Pauls, *and there he Sware, and made to them Surety by Writing, to ſuſtain, and maintain the Right.*

3. King *Henry* I. ratified theſe *Rights*. In his Charter we find in general, *Lagam Edvardi Regis vobis reddo cum iis emendationibus, quibus Pater meus eam emendaviit*, &c. *I reſtore to you the Law of King* Edward, *as it was mended* (*or enlarged*) *by my Father, with the Advice of his Barons.*

4. It is evident that King *John* (to omit others) both by His Coronation Oath, and at other times, confirmed theſe *Articles* or *Explanations* of the *Old Law*. Matth. Paris, *pag.* 239. *The King* (John) *ſtrictly commanded that the Laws of His Grandfather King* Henry, *ſhould be obſerved by the whole Kingdom.* But what this *Law* of King *Edward*, or *Emendations* contained, the ſame *Matth. Paris* ſetteth down in ſhort, *pag.* 252.

The

The Charter of King Henry [the First] *contained certain Liberties and Laws of King* Edward, *granted to the Church of* England, *and the great Men; as alſo ſome Liberties ſuperadded by King* Hen. I. And *pag.* 254. *Capitula quoque legum & libertatum*, &c. *The Heads* (*or Articles*) *of the Laws and Liberties which the Great Men deſired to be confirmed, are already entred, partly above in the Charter of* Henry I. *and partly were gathered out of the Old Laws of King* Edward. The Hiſtorian ſpeaketh of theſe very *Articles* here Printed.

5. 'Tis obſervable, That in theſe *Articles*, there is no care taken for the Liberties of the Church. The reaſon of which I conceive to be this: The Churchmen moſtly then held with the King. And the Hand of the King was moſt heavy upon the Laity, who framed theſe *Articles*, without the Clergy.

6. Theſe *Articles* provide nothing concerning the *Summons* and holding of the *Common Council* of the Realm. The reaſon whereof probably was this: The Barons of that time had introduced a Practice, of themſelves to appoint the *Time* and *Place* of the Meeting of the *Common Council* of the Nation: At the granting of theſe very *Articles*, King *John* ſent to the Barons; *Ut diem & locum proviſerent congruum, ad hæc omnia proſequenda. That they* (*the Barons*) *would appoint Time and Place for the concluding that matter.* In the time of *Henry* III. (in whoſe Charter the Article *de communi concilio habendo* was omitted; and in whoſe time the Barons begun again to War) we find, that the Lords came unto the King and ſaid, *He muſt ordain and ſee for the Welfare of the Realm, and*

and then ſet the King a Day to meet at Oxenford, *and there to hold a Parliament.* So the *Engliſh* Chronicle. However, this grand Affair, as alſo that of the Church, were provided for in the *Magna Charta* of King *John.* Whereby it further appears, That theſe *Articles* were but the Rudiments of that *Charter*, after further enlarged, upon further deliberation.

I COME now in the ſecond place to ſay a few things concerning the Perfect and Compleat *Magna Charta* of King *John*, here printed in *French.*

1. It was the Cuſtom of old Times to make three ſeveral Copies of Publick *Acts* and *Charters.* Of the *Magna Charta* we have one in *Latin*, in *Matthew Paris.* This in *French* (or old *Norman* Language) was kept in the Records of *France*, and thence Publiſhed ſome years paſt by *Luke Dachery*, in his *Spicilegium.* That in *Engliſh* was ſent into all Counties, but as yet no Copy in this Language appeareth. Thus alſo the Laws of *Canute*, and the *Proviſions* of *Oxford* (to mention no more) made in the time of *Hen.* III. were Publiſht in three Languages.

2. The very ſame Charter Publiſht in *Latin* by *Matthew Paris*, is alſo extant in the Hiſtory of *Rad. Niger*, almoſt word for word; and alſo in two ſeveral Manuſcripts in the *Cottonian* Library; where alſo about twenty years paſt the very Original was to be ſeen.

3. The *Magna Charta* of King *John* is not extant in any Record in the *Tower*, or elſewhere, as ſeveral affirm

affirm; nor the *Magna Charta* of *H.* III. but only by *Inſpeximus* in the time of *Edw.* I. A thing much to be wondered at. *Rudburne* writeth of the Charters of *Hen.* I. *Sublatæ ſunt omnes variis fallaciis, exceptis tribus. All but three were embezel'd.*

4. The *Magna Charta* of King *John*, and that of *Hen.* III. are ſaid to be the very ſame; where as they do exceedingly differ, as Mr. *Selden* in his *Epinomis* hath partly obſerved, and may further appear to any that will compare them. *Matthew Paris* pag. 323. *The Tenor of theſe Charters is fully ſet down, above, where our Hiſtory treateth of King* John *: So as the Charters of King* John and *Hen.* III. *are not found to differ in any thing.* Theſe words are not the words of *Matthew Paris*, but of *Roger Wendover*, (whom *Matthew Paris* often tranſcribeth very haſtily) in whoſe Hiſtory the Charter entred as King *John's*, is exactly the ſame with that Charter of *Henry* the Third.

5. As to that remarkable Article, *Et ad habendum commune concilium Regni.*—— *And to the holding the Communè Council of the Realm*, &c. I ſhall briefly ſay, 1. That it hath been left out of all the Charters after King *John's* time, but is found in ſeveral Copys very Authentick, and particularly in the *French* Copy now here printed. 2. That this Article doth not, as ſome have written, give the Original to our Parliaments; for ſuch Parliaments (or *communia concilia*) were held before this time. King *Richard* the Firſt, after his return from the *Holy War*, ſummon'd a *Common Council* (or Parliament) at *London*, of the Clergy and Laity, where

where he demanded Council about his making War upon the King of *France*; Earl *Roger* anſwered for the whole Parliament, *The Earls, Barons and Knights, will aid you, O King, with their Swords; the Archbiſhops, Biſhops, Citizens, Burgeſſes, and Eccleſiaſtick Perſons will aid you with Money; Abbates, Priors, and ſuch others will aid you with their Prayers.* So the *Engliſh Chron.* And to omit others, an Inſtance of ſuch a Parliament is found in the Annales of *Burton*, pag. 263. compared with page 265. *King* John *call'd to* Northampton *all the Earls and Barons of* England: it followeth, *Pandulfus ſpake* (at the ſame time) *to the Earls, Barons and Knights, O that you*, &c. The Clergy indeed are not here mentioned, but were certainly preſent, becauſe the occaſion of that *Council* was to reſtore Peace to the *Church and Kingdom*, as *Matthew Paris*, or as the Annaliſt of *Waverly* wordeth it, *betwixt the King and the Archbiſhop.*

3. I conceive the chief end of adding this Article, was to prevent the taking of *Aids*, (commonly called Talliage) or *Eſcuage*, by ſurprize, or by the conſent only of a few, which King *John* had lately done. For the ſummoning of the *Commune concilium* here is plainly limited to the *Seſſing of Aids and Eſcuage*: But the *Mirror* giveth another account of the meeting of Parliaments, worthy of Conſideration, *page* 225. where the Author refers us to higher times.

There is yet one Article more in this Charter of King *John* which deſerveth our regards, the rather becauſe it being lately alledged in the *Paſtoral Letter*, hath much ſcandalized ſome, with its ſupriſing Novelty.

The

The words are, *Barones cum communia totius terræ gravabunt nos. The Barons with the Community of the Land, ſhall aggrieve, or diſtreſs us*, &c. But why ſhould this ſound uncouth to any, who have with Reflection peruſed the Hiſtories of this, or the Neighbouring Kingdoms, wherein the ſame Practice is frequently found. *Andrew* King of *Hungary* allowed the ſame Liberty to his People, as may be ſeen at large in the *Decrees of the Kings of* Hungary, in the end of *Bonfinius*: Like Examples occur in the *French* Annales; and in the Annales of *Waverly* in the time of *Hen.* the Third, *pag.* 217.

If any will yet ſuſpect that *Matthew Paris*, in this Point, hath not writ fairly, or that the *Articles* produced by the Biſhop of *Salisbury* are not to be relied on, (and ſome ſuch diſſatisfied People there are) then let them (if they can be believed deſirous of ſatisfaction) repair to the *Red Book of Exchequer*, where fol. 234. they may find the very ſame *Words*, and *Liberty* granted, as before: Which Record cannot well be ſuſpected of being corrupted, becauſe it hath been always in good Cuſtody.

CAPITULA

Capitula ſuper quibus facta eſt Magna Charta Regis Johannis, ex MS. Arch. Cantuar. Fol 14. Quæ etiam authentice cum Sigillo extant in manibus Epiſc. Salisburienſis.

ISTA ſunt Capitula quæ Barones petunt, & Dominus Rex concedit ſignata Sigillo Johannis Regis.

Poſt deceſſum Anteceſſorum hæredes plenæ ætatis habebunt hæreditatem ſuam per antiquum relevium exprimendum in Charta.

Hæredes qui intra ætatem ſunt & fuerunt in cuſtodia, cum ad ætatem pervenerint, habebunt hæreditatem ſuam ſine relevio & fine.

Cuſtos terræ hæredis capiet rationabiles exitus, conſuetudines & ſervitia ſine deſtructione & vaſto hominum & rerum ſuarum. Et ſi Cuſtos terræ fecerit deſtructionem & vaſtum, amittat cuſtodiam, & cuſtos ſuſtentabit domos, parcos, vivaria, ſtagna, molendina, & cætera ad terram illam pertinentia de exitibus terræ ejuſdem. Et ut Hæredes ita maritentur ne diſparagentur & per concilium propinquorum de conſanguinitate ſua.

Ne vidua det aliquid pro dote ſua, vel maritagio poſt deceſſum Mariti ſui, ſed maneat in domo ſua per XC. dies poſt mortem ipſius: & infra terminum illum aſſignetur ei Dos, & maritagium ſtatim habeat & hæreditatem ſuam. Rex vel Ballivus non ſaiſiet terram aliquam pro debito dum catalla debitoris ſufficient,

cient, nec plegii debitoris distringantur dum capitalis debitor sufficit ad solutionem. Si vero capitalis debitor defecerit in solutione, si plegii voluerint, habeant terras debitoris donec debitum illud persolvatur plene, nisi capitalis debitor monstrare poterit se esse inde quietum erga plegios.

Rex non concedet alicui Baroni quod capiat auxilium de liberis hominibus suis, nisi ad corpus suum redimendum, & ad faciendum primogenitum filium suum militem & ad primogenitam filiam suam semel maritandam, & hoc faciet per rationabile auxilium.

Ne aliquis majus servitium faciat de feodo militis quam inde debetur: ut communia placita non sequantur curiam Domini Regis; sed assignentur in aliquo certo loco, & ut recognitiones capiantur in eisdem comitatibus in hunc modum. Ut Rex mittat duos Justitiarios per quatuor vices in anno, qui cum quatuor militibus ejusdem comitatus electis per comitatum capiant assisas de novâ dissaisina, morte antecessoris, & ultima præsentatione, nec aliquis ob hoc sit summonitus nisi juratores & duæ partes.

Ut liber homo amercietur pro parvo delicto secundum modum delicti, & pro magno delicto secundum magnitudinem delicti, salvo contenemento suo. Villanus etiam amercietur, salvo Wainagio suo, & Mercator eodem modo, salva mercandisa, per Sacramentum proborum hominum de visneto. Ut clericus amercietur de laico feodo suo secundum modum aliorum prædictorum & non secundum beneficium Ecclesiasticum.

Ne aliqua villa amercietur pro pontibus faciendis ad riparias, nisi ubi de jure antiquitus esse solebant.

Ut mensura vini, bladi, & latitudines pannorum, & rerum aliarum emendetur, & ita de ponderibus.

Ut assisa de nova dissaisina & de morte antecessoris abbrevientur & similiter de aliis assisis.

Ut nullus Vicecomes intromittat se de placitis ad Coronam pertinentibus sine coronatoribus, & ut comitatus & Hundreda sint ad antiquas firmas absque ullo incremento, exceptis dominicis Maneriis Regis.

Si al quis tenens de Rege moriatur, licebit Vicecomiti vel alio Ballivo Regis seisire & inbreviare catallum ipsius per visum legalium hominum, ita tamen quod nihil inde amoveatur donec plenius sciatur si debet aliquid liquidum debitum Domino Regi, & tunc debitum Domini Regis persolvatur. Residuum verò relinquetur executoribus, ad faciendum testamentum defuncti. Et si nihil Regi debetur, omnia catalla cedent defuncto.

Si aliquis liber homo intestatus decesserit, bona sua per manum proximorum parentum suorum & amicorum, & per visum Ecclesiæ distribuantur.

Ne viduæ distringuantur ad se maritandum dum voluerint sine marito vivere, ita tamen quod securitatem facient quod non maritabunt se sine assensu Regis, si de Rege teneant, vel dominorum suorum de quibus tenent.

Ne Constabularius vel alius ballivus capiat blada vel alia catalla, nisi statim denarios inde reddat, nisi respectum habere possit de voluntate venditoris.

Ne Constabularius possit distringere aliquem militem ad dandum denarios pro custodia castri si voluerit facere custodiam illam in propria persona, vel per alium probum hominem, si ipse eam facere non possit per rationabilem causam. Et si Rex cum duxerit in exercitum sit quietus de custodia secundum quantitatem temporis.

Ne Vicecomes vel Ballivus Regis vel aliquis alius capiat equos vel carectas alicujus liberi hominis pro carriagio faciendo nisi ex voluntate ipsius.

Ne Rex vel Ballivus suus capiat alienum boscum ad castra vel ad alia agenda nisi per voluntatem ipsius cujus boscus fuerit.

Ne Rex teneat terram eorum qui fuerint convicti de felonia, nisi per unum annum & unum diem; sed tunc reddatur Domino feodi.

Ut omnes Kidelli de cætero penitus deponantur in Tamisâ & Medeway & per totam Angliam.

Ne breve quod vocatur *Percipe* de cætero fiat alicui de aliquo tenemento unde liber homo amittat Curiam suam.

Si quis fuerit diſſaiſitus vel prolongatus per Regem ſine judicio de terris, libertatibus, & jure ſuo, ſtatim ei reſtituatur, & ſi contentio ſuper hoc orta fuerit, tunc inde diſponatur per judicium XXV. Baronum, & ut illi qui fuerint diſſaiſiti per Patrem vel fratrem Regis, Rectum habeant ſine dilatione per judicium parium ſuorum in curia Regis. Et ſi Rex debeat habere terminum aliorum Cruceſignatorum, tunc Archiepiſcopus & Epiſcopi facient inde judicium ad certam diem appellatione remota.

Ne aliquid detur pro brevi inquiſitionis de vita vel membris, ſed libere concedatur ſine pretio, & non negetur.

Si aliquis tenet de Rege per feodi firmam, per ſoccagium, vel burgagium: & de alio per ſervitium militis, Dominus Rex non habebit cuſtodium militum de feodo alterius occaſione Burgagii, vel Soccagii vel feodifirmæ; nec debet habere cuſtodium Burgagii, Soccagii vel feodifirmæ, & quod liber homo non amittat militiam ſuam occaſione parvarum ſergantiſarum ſicuti de illis qui tenent aliquod tenementum, reddendo inde cultellos, vel ſagittas vel hujuſmodi.

Ne aliquis Ballivus poſſit ponere aliquem ad legem ſimplici loquela ſua ſine teſtibus fidelibus.

Ne corpus liberi hominis capiatur nec impriſonetur, nec diſſaiſietur, nec utlagetur, nec exuletur, nec aliquo modo deſtruatur.

Nec Rex eat vel mittat ſuper eum vi niſi per judicium parium ſuum vel per legem terræ.

Ne jus vendatur, vel differatur vel vetitum ſit.

Quod Mercatores habeant ſalvum ire & venire, ad emendum vel vendendum ſine omnibus malis Toltis per antiquas & rectas conſuetudines.

Ne ſcutagium vel auxilium ponatur in Regno, niſi per commune conſilium Regni, niſi ad corpus Regis redimendum & primogenitum filium ſuum militem faciendum & filiam ſuam primogenitam ſemel maritandam & ad hoc fiat rationabile auxilium. Simili modo fiat de Tallagiis & auxiliis de civitate London & de aliis civitatibus quæ inde habent libertates, & ut Civitas London. plenè habeat antiquas libertates & liberas conſuetudines ſuas tam per aquas quam per terras.

Ut

Ut liceat unicuique exire de regno, & redire salva fide Domini Regis, nisi tempore Werræ per aliquod breve tempus propter communem utilitatem regni.

Si quis mutuo aliquid acceperit à Judæis plus vel minus, & moriatur antequam debitum illud solvatur, debitum non usurabit quamdiu hæres infra ætatem, de quocumque teneat. Et si debitum illud inciderit in manum Regis, Rex non capiet nisi catallum quod continetur in Charta.

Si quis moriatur & debitum debeat Judæis, uxor ejus habeat dotem suam; & si liberi remanserint, provideantur iis necessaria secundum tenementum, & de residuo solvatur debitum, salvo servitio Dominorum. Simili modo fiat de aliis debitis, & ut custos terræ reddat hæredi cum ad plenam ætatem pervenerit terram suam restauratam secundum quod rationabiliter poterit sustinere de exitibus terræ ejusdem de Carucis & Wainagiis.

Si quis tenuerit de aliqua escaeta sicut de honore Wallingford & Nottingham, Bonon & Lancaster, & de aliis escaetis quæ sunt in manu Regis, & sunt Baroniæ, & obierit, hæres ejus non dabit aliud relevium vel faciet aliud servitium quam faceret Baroni, & ut Rex eodem modo eam teneat quo Baro eam tenuit.

Ut fines qui facti sunt pro dotibus, maritagiis, hæreditatibus & amerciamentis, injustè & contra legem terræ, omnino condonentur, vel fiat inde per judicium XXV. Baronum, vel per judicium majoris partis eorundem una cum Archiepiscopo & aliis quos secum vocare voluerit, ita quod si aliquis vel aliqui de XXV. fuerint in simili querela, amoveantur, & alii loco illorum per residuos de XXV. substituantur.

Quod obsides & Chartæ reddantur quæ liberatæ fuerunt Regi in securitatem.

Ut illi qui fuerint extra forestam non veniant coram Justitiariis de Foresta per communes summonitiones, nisi sint in placito, vel plegii fuerint, & ut pravæ consuetudines de forestis & de forestariis & Warrennis & Vicecomitibus & vivariis emendentur per XII. milites de quolibet comitatu qui debent eligi per probos homines ejusdem comitatus.

Ut Rex amoveat penitus de Ballivâ parentes & totam ſequelam Gerardi de Aties quod de cætero Ballivam non habeant, ſcilicet Engelardum, Andr. Petrum, & Gigonem de Cances, Gigonem de Cygon, Mattheum de Martino & fratres ejus & Gelfrid nepotem ejus & Philippum de Marke.

Et ut Rex amoveat alienigenas milites, Stipendiarios, Baliſtarios & Ruttarios, & Servientes qui venerunt cum equis & armis ad nocumentum regni.

Ut Rex faciat Juſtitiarios, Conſtabularios & Vicecomites & Ballivos de talibus qui ſciant legem terræ & eam velint bene obſervare.

Ut Barones qui fundaverunt Abbatias unde habent chartas Regum vel antiquam tenuram, habeant cuſtodiam earum cum vacaverint.

Si Rex Walenſes diſſaiſierit vel elongaverit de terris, vel libertatibus, vel de rebus aliis in Anglia vel in Wallia, eis ſtatim ſine placito reddantur: & ſi fuerint diſſaiſiati vel elongati de tenementis ſuis Anglicis per patrem vel fratrem Regis ſine judicio parium ſuorum, Rex eis ſine dilatione juſtitiam exhibebit eo modo quo exhibet Anglicis juſtitiam de tenementis ſuis Angl. ſecundum legem Angl. & de tenementis Wall. ſecundum legem Wall. & de tenementis Marchiæ ſecundum legem Marchiæ. Idem facient Wallenſes Regi & ſuis.

Ut Rex reddat filium Lewelini & præterea omnes obſides de Wallia, & Chartas quæ ei liberatæ fuerunt in ſecuritatem pacis.

Ut Rex faciat Regi Scotiæ de obſidibus reddendis & de libertatibus ſuis & jure ſuo ſecundum formam quam fecit Bar. Angl. niſi aliter eſſe debeat per Chartas quas Rex habet per judicium Archiepiſcopi & aliorum quos ſecum vocare voluerit.

Ut omnes foreſtæ quæ ſunt aforeſtatæ per Regem tempore ſuo deafforeſtentur, & ita fiat de ripariis quæ per ipſum Regem ſunt in defenſo.

Omnes autem iſtas conſuetudines & libertates quas Rex conceſſit regno tenendas quantum ad ſe pertinent, erga ſuos, omnes

omnes de regno tam Clerici quam Laici obſervabunt quantum ad ſe pertinet erga ſuos.

"Hæc eſt forma ſecuritatis ad obſervandam pacem & libertates inter Regem & Regnum, Barones eligent XXV. Barones de regno quos voluerint, qui debent pro totis viribus ſuis obſervare, tenere, & facere obſervari pacem, & libertates quas Dominus Rex eis conceſſit, & Charta ſua confirmavit. Ita, viz. Quod ſi Rex, vel Juſtitiarii, vel Ballivi Regis vel aliquis de miniſtris ſuis in aliquo erga aliquem deliquerit, vel aliquem articulorum pacis, aut ſecuritatis tranſgreſſus fuerit, & delictum oſtenſum fuerit IV. Baronibus de prædictis XXV. Baronum: illi IV. Barones accedent ad Dominum Regem vel ad Juſtitiarium ſuum, ſi Rex fuerit extra regnum, proponentes ei exceſſum & petent ut exceſſum illum ſine dilatione faciat emendari. Et ſi Rex vel Juſtitiarius illud non emendaverit, Si Rex fuerit extra regnum, infra rationabile tempus determinandum in Charta, prædicti IV. referent cauſam illam ad reſiduos de illis XXV. Baronibus, & illi XXV. cum communia totius terræ deſtringent & gravabunt Regem modis omnibus quibus poterint: ſcilicet per captionem caſtrorum, terrarum, poſſeſſionum & aliis modis quibus poterint, donec fuerit emendatum ſecundum arbitrium eorum. Salva Perſona Domini Regis, & Reginæ, & Liberorum ſuorum. Et cum fuerit emendatum, intendant Domino Regi ſicut prius. Et quicunque voluerit de terra, jurabit ſe, ad prædicta exequenda, pariturum mandatis prædictorum XXV. Baronum, & gravaturum Regem pro poſſe ſuo cum ipſis. Et Rex publicè & libere dabit licentiam jurandi cuilibet qui jurare voluerit, & nulli unquam jurare prohibebit. Omnes autem illos de terra qui ſponte ſuâ, & per ſe jurare voluerint XXV. Baronibus de diſtringendo & gravando Regem, cum iis Rex faciet jurare eoſdem de mandato ſuo ſicut prædictum eſt.

Communâ, C. M. Ep. Sal.

"Item ſi aliquis de prædictis XXV. Baronum deceſſerit, vel à terra receſſerit, vel aliquo alio modo impeditus fuerit quominus iſta prædicta poſſit exequi, qui reſidui fuerint de XXV. eligent alium loco ipſius pro arbitrio ſuo, qui ſimili

Sic & M. Ch. Epiſc. Sar.

" simili modo erit juratus quo & cæteri. In omnibus autem
" quæ istis XXV. Baronibus committantur exequenda, si fortè
" ipsi XXV. præsentes fuerint & inter se super re aliqua dis-
" cordaverint, vel aliqui ex eis notati nolint vel nequeant
" interesse, ratum habebitur & firmum quod major pars ex
" eis providerit vel præceperit, ac si omnes XXV. in hoc con-
" sensissent. Et prædicti XXV. jurabunt quod omnia ante-
" dicta fideliter observabunt, & pro toto posse suo facient
D. Matth. Par. " observari. Præterea Rex faciet eos securos per Chartas
" Archiepiscopi & Episcoporum & Magistri Pandulfi, quod
" nihil impetrabit à Domino Papa per quod aliqua istarum
" conventionum revocetur vel minuatur. Et si aliquid tale
Hic & Ch. M. Episc. Sar. sine dato. " impetraverit, reputetur irritum & inane, & nunquam eo
" utatur. Sine dato.

DIPLOMA

DIPLOMA REGIUM:

Eruit D. d'Heroval.

SIVE

Ordinationes JOHANNIS Regis Angliæ, queis ſtatuit quid Nobiles, quid Plebeii obſervare debeant, ad pacem & tranquillitatem Regni ſtabiliendam.

VIII. JOHAN par la grace de Deu Roi Dengleterre, as Arceveskes, as Eveskes, as Abbez, as Contes, as Barons, as Juſtiles, as Fozeſtiers, as Viſcontes, as Prevoz, as Miniſtres, & a toz les Bailliz, & les fæls, ſaluz. Sachiez que nos par la grace de Deu & pur le ſauvement de noſtre aſme, & de toz nos anceſtres, & de noz eirs, & de lenoz de Deu, & le ſauvement de ſeinte Iglíſe, & lamendement de noſtre Regne, par le conſel de noz enozez peres Larceveske Eſtievene de Cantozbire Primat de tote Engleterre & Cardinal de Rome, & Larceveske Henri de Diveline, & Leveſke Willaume de Londzes, Leveske Pieres de Wincestre, Leveske Jocelin de Ba, Leveske Hue de Nichole *, Leveske Gautier de Wirecestre, Leveske Will. de Ceſtre, & Leveske Beneit de Rovecestre, & Maiſtre Pandol Sodiacre noſtre Seignoz Lapoſtoire, & noſtre ami frere Anner Maiſtre de la Chevalerie del Temple de Engleterre, & de nos Barons Will. le Mareſcal Comte de Penbzoc, Will. Conte de Saliſbires, Will. Conte de Warenne, Will. Conte de Arondel, Alain de Galwche, Conestable d'Eſcoce, Warin le fiz Gerod, Peres le fiz Herebert, Hubert de Bozc Seneſchau de Peitou, Huge de

An. Chr. 1215.

* Lincolne.

re Nuevile, Matheu le fiz Herebert, Thomas Baſſet; Alain Baſſet, Philippe Daubeigni, Robert de Ropelæ, Johan. Mareſcal, & Johan le fiz Hue, & de nos autres feels.

* otriè. Premierement que nos avons ottie * a Deu & le confermons par ceſte noſtre preſente Chartre, poz noz, & poz nos eirs a toz iozz, que les Yglíſes de Engleterre, ſeront franches & aient loz dreitures franches & enterines & plenieres, & volon que cili ſeit garde la que choſe apert, par co que nos otriames par noſtre pure volunte & de gre les franchiſes des Ellections que len tienent par plus grant & par plus neceſſaire as Yglíſes de Engleterre, devant que la deſcozde fuſt commencie entre nos & nos Barons, & la confirmames par noſtre Chartre & parchacames que ele fu confirmée par noſtre Seignoz Lapoſtoire Innocent le tiers, laquelle nos garderons & volons que noſtre eir la gardent toz iozz en bone fei.

Nos avon encoze otrie a toz les francs homes de noſtre Regne pur nos, & pur nos eirs a toz iozz totes les franchiſes qui de loz ſunt eſcrites, quil les aient & les tiegnent il & loz eir de nos & de nos eirs, le acuns de nos Contes, vo de nos Barons, vo des altres qui tienent de nos en chief par ſerviſe de Chevalier moza, et quant il ſera moz & ſes eirs ſera de plein aage & deva relief, ait ſon heritage par l'ancien relief, co eſt a ſavier li eir, ou li eir del Conte, de Baronie Contal entiere par C. livzes li eirs ou li eir del baron de la baronie par C. livzes : li eirs ou li eir de Chevalier de fie de Chevalier entier par C. ſol au plus, & qui meins deva meins doinſt ſolon lanciene coſtume del fie.

Si le eirs d'aucun di tels ſera dedens aage, & ſera en garde; quand il ſera parvenu a aage ait ſon heritage ſans relief & ſans fin.

Les gardeozs de la terree de tel heir qui ſera dedens aage ne pzegne de la terre de leir foz Reignables, eiſſues & Reignables coſtumes, & Reignables ſervices, & ce ſenz deſtruiement, & ſenz vaſt des homes & des choſes.

Et ſe nos avons livzée la garde de la terre daucun itel a Uiſconte o a acune altre qui nos dei reſpondze des eiſſues de la terre, et cil de la garde ſera deſtruiement o gaſt, nos pzendzons de celuy amende, & la terre ſera livzée a deus leals pzodeshomes de

de cel fei qui reſpoignent des eiſſues a nos, o celui que noz comanderons.

Et ſe nos avons done o vendu a aucun la garde de la terre de aucun itel, & cil enfra deſtruiement o waſt per de cele garde, & ſeit livze a deus leials ſage prodeshomes & dicele que i nous reſpoignent, ſi come nos avons devant dit.

Et ſi le gardioz tant dis com il aura la garde de tele terre, ſoſtinges les meiſons, les vivieis, les pars, les eſſans, les molins, & les altres choſes qui apartient a cele terre de eiſſues, & de celle meimes terre: & rendza al heir quant ſera parvenus en plain aage ſa terre tote eſtozée de charues, de granges, ſolon coque li tens de la gaignerie requera, & les eiſſues de la terre pozront muſurablement ſoffrir reiſnablement.

Li heir ſeient marie ſans deſparagement eiſſi ne purquant que ainz que li mariages ſeit fet, ſeit moſtre al prochains del lignage de cel heir.

La Veve empzes la mozt de ſon mari namtenant & ſans grevance ait ſon mariage & ſon heritage, ne riens ne doinſt pour ſon mariage, ne pour ſon doaire, ne pour ſon heritage que ele & ſes maris tiudzent, al iozdela mozt del mari, & ſeit en la maiſon de ſon mari puis quil ſera mozt xl. jozz dedens les quels jozz li ſeit les doairez livzez.

Nule Veve ne ſeit deſtreite de ſei marier tant dis come ele voldza vivze ſanz mari, eſſi ne purquant que ele face ſeurte que ele ne ſe marira ſanz noſtre otrei, ſe ele tinent de nos o ſenz lotrei de ſon Seignoz de qui elle tient, ſe ele tient dautrui.

Ne nos ne noſtre Bailli ne ſeiſeron terre ne rente del dettoz pour aucune dette tandis com ſis chattels ſoffiſent a paier la dette, ne ſi plege ne ſeront deſtroit tant dis come le chevetaigne dettoz ſoffira a la dette paier. Et ſe le chevetaigne detoz na de quei paier ſa dette, reſpoigne li plege de la dette. Et ſil volent aient les terres, & les rentes del detter juſquil aient reſtozement de la dette quil ont devant paiæ pour lui; ſe le chevetaigne detoz ne monſtre quil en eſt quitte vers cels pleges.

Se aucuns a empzunte as Jeus * plus o meins, & muert devant quil loz alt paie loz avoir, ne croiſe mie la dette tant dis com li heirs ſera dedens aage, & ſe cele dette vient en nos mains

* Id eſt Judæis.

Id eſt, * le capital, le principal.

mains nos nen prendron que le chaſtel * que nos troveron en la charte.

Et ſe aucun muret, & deit dette as Jeus, ſa feme ait ſon doaire, & ne paiet nient de cele dette, & ſe li enfant qui remaindront del mort ſont dedenz aage, porveu lor ſeit lor eſtoveir raiſnablement ſolonc le tenement qui fu del mort, & del remanant ſeit paiæ la dette, ſauf le ſervice des Seignors, & en tel maniere ſeit feit de dettes que l'on deit a altres que a Jues.

f. † taille. * aide. Id eſt, † ad noſtrum corpus redimendum ſi in bello capti fuerimus, ut infra.

Leu ne mettra nul eſcuage †, ne aie * en noſtre Regne, fors par commun conſeil de noſtre Regne, fors a noſtre reimbre † & a noſtre ainzne fiz faire Chevalier, & a noſtre ainznée fille marier une feiz; & a ceſtes choſes ne face len aie ſe raiſnable non.

En cele mainere ſeit feit daies de la cite de Londres, & eſtre co la cite de Londres ait totes ſes ancienes coſtumes, & ſes franchiſes & par mer & par aigue.

Nos volons eſtre co, & otrions que totes les altres citez & li borc, & les viles, & li port aient en totes lor franchiſes, & lor franches coſtumes, & aient le commun conſeil del Regne, de laie a aſſeeir altrement que as treis cas qui ſont devant dit.

E leſcuage aleer ferons ſomondre les Arcevelkes, les Evelkes, les Abbez, les Comtes, les greignors Barons: chacun par ſei par nos lettres, & eſtre co ferons ſomondre en commun par nos Viſcontes, & par nos Bailliz toz ceus qui de nos tienent en chief a certain jor, co eſt al terme de xl. jorz al mainz & a certain lieu, & nomerons la cauſe en totes lettres de ceſte ſomonſe. Et quant la ſomonſe ſera iſſi feite voiſt li afaires avant, au jor aſſigne ſolon le conſeil di cels qui ſeront preſent; ja ſeit co'que ne ſeient pas venu tuit cil qui furent ſomons.

Nos notrions a nul des ore en avant quil pregne aie de ſes frans homes fors a ſon cors raimbre * & a ſon ainzne fiz faire Chevalier, & a ſa fille ainznée marier une feiz, & a co ne ſeit feit aie ſe raiſnable non.

* Vide ſupra.

Nuls ne ſeit deſtreinz a faire grenor ſerviſe de fieu de Chevalieo o daltre franc tenement, que tant come il tient & deit.

Li commun plait ne ſuient mie noſtre cort, mais ſaient tenu en alcun certain lieu.

Les reconuſſances de novele deſſaiſine de mort danceſtre, & de darrain preſentment ne ſeient priſes fors en lor Contez & ceſte maniere: Nos o noſtre Chevetains Juſticieres ſe nos fumes fors

del

del Regne enveierons deus justices par chascun Conte par iv, feiz en lan qui o quatre des Chevaliers de chascun Conte esleuz par le Conte pregnent el Conte, & el jor del Conte, & en certain lieu les devant dites assises, & se les devant dites assises ne puent estre prises el jor del Conte, tant Chevaliers & franchement tenanz remaignent de cels qui furent present al Conte en icel jor par qui puisent li jugement estre fait sofisaument, solon co qui li afaire sera plus grant oplus petit.

Frans hom ne set amerciez pour petit forfit fors solon la maniere del forfait, & pour le grant forfait seit amerciez solonc la grandesce del forfait sauf son contenement, & li marcheant ensemt sauve la marchendise. Li Vilaint ensemt seit amerciez saals son gaagnage sil chiet en nostre merci, & nule des devant dites merciz ne sera mise fors par le serement de prodomes & des leaus des visnez.

Li Conte & li Baron ne seient amerciez fors par lor pers & solonc la maniere del forfait.

Nus clers ne soit amerciez de son lai tenement, fors solonc la maniere des altres qui devant sunt dit, & nun pas solonc la quantite de la rente de Siglise *. f. * des Iglise, ou de Liglise.

Ne vile ne home ne seit destreiz a faire ponz a rivieres, fors cil qui ancienement & par drect les devent faire.

Nuls Visquens ne Conestables ne nostre Coroneor ne nostre altre Bailli ne tiegnent les plaiz de nostre Corone.

Chascune Comtez, Hundrez, Wapulzac, & Treingues, soient as anciencs fermes sens nul croisement, fors nos demeins maniers.

Se aucuns qui tient lai fie de nos muert & nostre Visquens, o altres nostre Bailliz, monstre nos lettres overtes de nostre semonse de la dette que li mort nos deveit, leissie a nostre Visconte o a nostre Bailli atachier & enbrever les chatels del mort, qui seront trove el lai fie a la vaillance dicelle dette, que li morz nos deveit par veue de leaus homes, eissi ne par quant que riens ne seit oste jusque nos seit paiée la dette qui sera coneue ; & li remanant seit saissie as executors a faire le testament del mort : & sil ne nos deivent rien tot li chatel seient otrie al mort, sauves les reignables parties de sa feme & de ses enfans.

Se aucuns frans huem muert senz testament, li chatel seient departi par les mains des prochains parenz & de ses amis par la veue de seinte Iglise, sauves les dettes a chascun que le mort lor devoit.

Nus de nos Conestables ne de nos altres Bailliz ne prεgne les blez, ne les altres chatels daucun, ſe maintenant nen paie les deniers, ſil nen puet aver reſpit par volente del vendeor.

Nus Conestables ne deſtreigne nul Chevalier a doner deniers pour la garde del Chaſtel, ſil lavoit faite en ſa propre perſone u par altre prodome ſil ne la puet faire par aucune reignable achaiſun *, ε ſe nos le menons o enveions en oſt, il ſera quites dicele garde tant dis cum il ſera par nos en loſt.

* Id eſt raiſonable occaſion.

Nus Viſcontes ne noſtre Bailliz ne altre ne prεgne les chevals ne les charettes daucun franc home, pour faire cariage, forz par la volente de cel franc home.

Ne nos ne noſtre Baillie ne prendrons altrui bois a nos Chaſtels, o a nos altres ovres faire, forz par la volente de celui cui ſera li bois.

Nos ne tendrons les terres de cels qui ſeront convencue de felonie, forz un an ε un jor, ε adons les rendrons as Seignors des fitz.

Mot li Kidel ſeient dici en avant oſte del tot en tot de Tamiſe ε de Medoine, ε par tote Engleterre, forz par la coſtiere de la mer.

Li bries qui eſt apelez precipz des ci en avant ne ſeit faiz a nul daucun tenement, dont frans hoem penſt perdre ſa cort.

Une meſure de vin ſeit par tot noſtre Regne, ε une meſure de cerveiſe, ε une meſure de ble, co eſt li quartiers de Londres, ε une leiſe de dras teinz, ε de roſez, ε de habergiez, co eſt deus aunes dedenz liſtes, ε des peis * ſeit enſement come des muſures. †

* pois.
† meſures.

Riens ne ſeit done ne pris des ci en avant pour le brief del enqueſte de vie, o de membres de aucun, mais ſeit otrée en pur don, ε ne ſeit eſconduit.

Se aucuns tient de nos par feuferme o par, ſokage, ε tient terre daltrui par ſerviſe de Chevalier, nos n'aurons mie la garde del heir, ne de la terre qui eſt daltrui fie par achaiſon de cele feuferme, o del ſokage, o del borgage. Ne n'aurons la garde de cele feuferme, o del ſocage, o del borgage, ſe cele feuferme ne deit ſervice de Chevalier.

Nos n'aurons la garde del heir ne de la terre dalcun, que il tient daltrui par ſerviſe de Chevalier, par achaiſon daucune petite ſerjanteri, quil tient de nos par ſerviſe de rendre ſaettes, o cotelz, o tels choſes.

Nuls Bailliz ne mette des cien avant alcun a lei par ſa ſimple parole, forz par bons teſmoins amenez aice.

Nuls

Nuls frans hom ne sera pris, ne empresonez, ne dessaisiz, ne ullagiez, ne eissilliez, ne destruiz, ne aucune maniere, ne sor lui n'irons ne n'enveierons, fors par leal jugement de ses pers, o par la lei de la terre.

A nulli ne vendrons, a nulli nescondirons ne ne proloignerons dreit ne justise.

Tuit li marchant aient sauf e seur eissir d'Engleterre, e venir en Engleterre e demorer, , e aler par Engleterre, par terre e par eaue a vendre e a chater, sans totes males totes par les ancienes drettes costumes, fors el tens de guerre, cil ki sunt de la terre qui nos guerroie, e se tel sunt trove en nostre terre el commancement de la guerre, soient atachie sans domage de lor cors e de lor chosen, jusqu'il seit seu de nos o de nostre chevetein Justifier coment li marcheant de la nostre terre seront traitie, qui donc seront trove en la terre qui contre nos guerroie, e se li nostre sunt ilucke sauf, seient si lor sauf en la nostre terre.

Leise chacun des ci en avant eissir de nostre Regne e repairier sauf e seur par terre e par eue sauve nostre fei, fors el tens de guerre par alcun petit tens pour preu del Regne: Pais di co sunt jette fors li empresone, e li ullagie solon la lei del regne, e la gent ki contre nos guerroie. Des marcheans seit feit, si come nous avons devant dit.

Se aucuns tient daucune eschaette si come del honor de Malingefort, Notingehan, Boloigne, Lancastre, u dautres echaetes qui sunt en nostre main, e sunt de baronie, e il muert, ses heirs ne doinst altre relief, ne face a nos altre servise, qui feist al Baron, ce cele Baronie fust en main del Baron, e nos la tendrons en cele maniere que le Baron la tint.

Li home qui maignent fors de la forest, ne viegnent de ci en avant devant nos Justises de la forest par communes somonces, sil ne sont en plait u plege de aucun ou d'aucuns qui seient atachie pour la forest.

Nos ne serons Vescontes, Justises, ne Bailliz, fors de tels qui sachent la lei de la terre, e la voillent bien garder.

Tuit cil qui fonderent Abbeies, dont il ont charges des Reis d'Engleterre, o anciene tenue, aiant en la garde quant eles seront voides, si com il avoit devent.

Totes les forez qui sunt afforestées en nostre tens seient meintenant defforestées, et ensement seit feit des rivieres qui en nostre tens sunt par nos mises en defens.

Totes les males coſtumes des foꝛez et des Warennes, et des Foꝛeſtiers, et des Warrenniers, des Uiſcontes et de loꝛ miniſtres des rivieres, et de loꝛ gardes, ſeient maintenant enquiſes en chaſcun Conte par xii. Chevaliers Jurez de meimes le Conte, qui devent eſtre eſleu par pꝛodeſhomes de meiſmes le Conte et de denz xl. joꝛz apꝛes co quil auront fette lenqueſte, ſeient del tot en tot oſtées par cels meiſmes, ſi que jamais ne ſaient rapelées, eiſſi ne poꝛ quant que nos le ſachons avanto noſtre Juſtiſe, ſe nos ne ſumes en Engleterre.

Nos tendꝛons maintenant toz les hoſtages et totes les chartres, qui nos furent livrées des Engleis en ſeurte de pais, o de feel ſerviſe.

Nous oſteron de tot en tot des baillies les parens Girard d'Atiés, ſi que des ci en avant n'auront nulle baillie en Engleterre, et Engelart de Cigoigni, Peron, Guion, Andꝛeu de Chanceas, Gion de Cigoigni, Giſtrai de Martigni et ſes freres, Phelippe, Marc et ſes freres, Gefrai ſon nevo, et tote loꝛ ſiute, et maintenant empꝛes le refoꝛmement de la pais oſterons de noſtre Regne tos les eſtranges Chevaliers, Aubelaſtiers, ſerjans, ſoldiers quo chevals et o armes vindꝛent al nuiſement del Regne.

* Leal, ut infra. Se alcuns eſt deſſaiſiz o eſloigniez par nos, ſens real * jugement de ſes pers, de terres, de chaſtels, de franchiſes, o de ſa dꝛetture maintenant li rendꝛons, et le plaiz en commencera di co, adonc en ſeit fait par jugement des xxv. Barons, dont len parole de ſoz en la ſeurt de la pais.

De totes iteles choſes dont alcuns fu deſſaiſiz o eſloigniez ſenz leal jugement de ſes Pers par le Rei Henri noſtre pere, o par le Rei Richart noſtre frere, que avons en noſtre main, o altre tienent cui il nos covient garantir, aurons reſpit juſqu'a commun terme des croiziez, foꝛs que celes choſes dont plaiz fu comenciez o enqueſte faite par noſtre comandement devant que nos pꝛiſſions la Croiz. Et ſe nos repairons del pelerinage o par avanture remanons del pelerinage maintenant en frons pleine dꝛeiture. Ceſt meimes reſpit aurons et en ceſte maniere de dꝛeiture faire des foꝛez deſafoꝛeſter, o que remaignent foꝛez que li Reis Henri noſtre pere, o li Reis Richart noſtre frere afoꝛeſterent, et des gardes des terres qui ſunt daltrui fiez; que nos avons eues juſques icy par achaiſon de fie que alcuns teneit de nos par ſerviſe de Chevalier, et

des

des Abbeies qui furent fondées en altrui fie que el noſtre, eſquels li ſires del fie dit quila dꝛoiture, et quant nos ſeron repairie de noſtre pelerinage, o ſe no remanons, nos enfrons maintenant pleine dꝛoiture a cels qui len plaindꝛont.

Nuls ne ſoit pꝛis ne empꝛiſonez pour apel de feme de la moꝛt daltrui, que de ſun marri.

Totes les fins et toꝛ les amerciemens qui ſont feit vers nos a toꝛt et contre la lei de la terre, ſoient tot pardone, o len en face par jugement del xxv. Barons dont len parole de ſoꝛ, o par le jugement de la greignoꝛ partie de cels enſemble, o le devant dit Arcevеſque Stefne de Cantoꝛbe ſil i puet eſtre: et cels quil vodꝛa apeler od ſei, et ſil ni pora eſtre neien meins ne voiſt li afaires avant ſenz lui en tel maniere que ſe alcuns o alcun des devant diz xxv. Barons, ſeront en tel querele ſeient oſte de ceſt jugement, et altre eſleu et jure ſeient mis a ço faire en lieu de cels par le remanant des devant diz xxv. Barons.

De nos avons deſſaiſiz et eſloigniez les walais de terre et de franchiſes, o daltres choſes ſenz leal jugement de loꝛ Pers en Engleterre, o en wales, maintenant loꝛ ſeient rendues, et le plaiz en ſera comanciez ſeloꝛ en ſeit fait en la Marche par jugement de loꝛ Peres des tenemenz d' Engleterre ſolonc la lei d' Engleterre des tenemenz de wales ſolonc la lei de wales, des tenemenz de la Marche ſolonc de lai de la Marche, et ce meiſmes facent li walais a nos et as noz.

De totes celes choſes dont alcuns des walair fu deſſaiſiz, o eſloignie ſenz leal jugement de ſes Pers par le Rei Henry noſtre pere, o par le Rei Richart noſtre frere, que nos avons en noſtre main, o altre tienent cui il nos codient garantir, aurons reſpit juſqual commun terme des Croiſiez, foꝛs de celes choſes dont plaiſt fu commenciez o enqueſte faite par noſtre commandement devant que nous pꝛiſſions la Croiz, et quant nos ſerons repairiez o ſe par aventure remanons de noſtre pelerinage maintenant loꝛ enfrons pleine dꝛeiture ſolonc les leꝛ de wales, et les devant dites parties.

Nos rendꝛons le fil Lewelin maintenant et toꝛ les hoſtages de wales, et les chartres que l'en nos livra en ſeurte de pais.

Nos

Nos ſerons a Aliſandre le Rei d'Eſcoce de ſes ſetors et de les hoſtages rendre, et de ſes franchiſes, et de la dreiture ſolonc la forme que nos frons a nos altres Barons d'Engleterre, ſe altrement ne deit eſtre par les chartres que nos avons de ſon pere Willaume, qui fu jadis Reis d'Eſcoce, et co ſera fait par jugement de ſes Pers en noſtre Cort.

Totes ces coſtumes devant dites et les franchiſes que nos avons otriées a tenir en noſtre Regne quant a nos apartient envers les nos, tuit cil de noſtre Regne, et Clerc et lai devent garder quant a eus apartient envers les lor.

Et car nos avons otriées totes les choſes devant dites por Deu, et par amandement de noſtre Regne, et por mielz plaiſier la deſcorde qui es comanciée entre nos et nos Barons; nos voeillant que ces choſes ſænt fermes et eſtables a tozjors, faiſons et otrions a nos Barons la ſeurte de ſoz eſcrite; co eſt que li Baron eſliſent xxv. Barons del Regne telz quil vodrent, qui dient de tot lor poer garder et tenir, et faire garder la pais et les franchiſes que nos avons otriées et confermées par ceſte noſtre preſente Chartre, eiſſi co eſt a ſaver que ſe nos, o noſtre Juſtiſe, o noſtre Bailli, o aucuns de nos miniſtres meſfaiſons en alcune choſes vers alcun, o treſpaſſions en alcun point de la pais, o de la ſeurte, et noſtre meſfais ſera moſtrez a quatre Barons del devant dit xxv. cil quatre Baron viegnent a nos, o a noſtre Juſtiſe, ſe nos fumes lors del Regne, et nos moſtrent noſtre treſpaſſement, et requierent que nos faciens amender cel treſpaſſiment ſenz proloigniement et ſe nos namendions le treſpaſſement, o ſe nous fumes fors del regne noſtre Juſtiſe ne lamendra devant xl. jors empres co que il ſera moſtre a nos, o a noſtre Juſtiſe ſe nous fumes fors de la terre, adonc li devant dit quatre reportent cele cauſe al altres de celz xxv. Barons, et adonc cil xxv. Baron a la commune de tote Engleterre nos deſtreindront et greveront en totes li manieres que il porront. Co eſt par prendre chaſtelz et terres et poſſeſſions, et en queles altres maniers quil porront, juſquil ſeit amende ſolonc lor jugement, ſauve noſtre perſonne et de noſtre Reine, et de nos enfans, et quant il ſera amande il atendront a nos, eiſſi come devant. Et qui vodra de la terre jurt que a totes les devant dites choſes parſivir, il obeira al comandement des devant diz xxv. Barons, et quil nous grevera enſemble oels

a ſon

a ſon poer, & nous donons comunement & franchement congie de jurer a chaſcun qui jurer vodra, & ja ne le defendrons a neis un, & toz cels de la terre qui de loz von gre voldzont jurer as xxv. Barons, de deſtreindre & de grever nos, nos les frons jurer cels par noſtre comandement, ſi com devant eſt dit.

Et ſe alcuns des xxv. Barons morra, o partira de la terre, o ſera deſtorbez en aucune maniere quil ne puiſt les choſes qui ſunt devant dites pourſivir, cil qui ſeront remes des devant dit xxv. Barons, eſliſent un altre en lieu de celui ſolonc loz eſgart, que jurera en tel maniere com li altre ont fait.

Et en totes les choſes que li xxv. Baron devent pourſivir ſe paraventure cil xxv. ſeront preſent, & deſcorderont entre els d'aucune choſe, o aucun de cels qui ſeront ſomons ne vodzont, o ne pouront eſtre preſent, ſeit ferm & certain co que la greignoz partie de cels qui ſeront preſent pozverra, o recevra enſement com ſe tuit i aveient conſenti.

Et li devant dit xxv. Baron juerent que totes les choſes qui ſunt devant dites, quil garderont feelement, & feront garder de tot loz poer.

Et nos ne pozchacerons dalcun par nos, ne par altrui rien pour quei alcuns de ces otreiemenz o de ceſtes franchiſes ſeit rapelez o amenuſiez, & ſe alcune tel choſe ſera pourchacie ſeit caſſée, & veine, & ja nen uſerons par nos ne par altrui.

Et totes males volentrs, deldeigz, rancorz, qui ſont nées entre nos & nos homes clers & lais, deſke la deſcorde, comanca, avons plainement relaiſſiées & pardonées a toz, & eſtre co toz les treſpaſſemens qui ſunt fait par achaiſon di ceſte deſcorde des la Paſche en la ſezain de noſtre Regne juſqual reſozmement de la pais avom plainement relaiſſie a toz clers, & a lais & quant a nos apozrtient loz avon plainement pardone & otrie di co loz avon fait faire lettres de teſmoin overtes de Seignoz Steſne l' Arcevelke de Cantozbire, de Seignoz Henri l' Arceveske de Diveline, & des devant diz Eveſques, & de maiſtre Pandolf loz ceſte ſeurte & ces otreiemenz, poz la que choſe nos volons & comandons fermement que l' Eglíſe d' Angleterre ſoit franche, & que li home en noſtre Regne aient & tiegnent totes les devanz dites franchiſes, & les deitures, & les otreiemenz bien & en pais franchement & quittement,

tement, plainement & entierement a els, & loꝛ heirs en totes choſes, & en toꝛ leus, a toꝛjoꝛz ſi com devant eſt dit. Et ſi fu jure de noſtre part, & de la part des Barons que totes choſes qui delus ſunt eſcrites, ſeront gardées a bone fei ſanz malengin. Teſmoig en ſont cil qui ſunt devant dit, & mult altre.

Ceſte chartre fu donée el pꝛe eſt appelez Roveninkmede entre Windeſoꝛes & Stanes, le quinzain joꝛ de juig l'an de noſtre Regne dis & ſept ans.

1215. Johan, par la grace de Deu Reis d' Engleterre as Viſconte de Suthanteſire, & a doſce eſleuz en tel Conte a enquerre & oſter les malveiſes coſtumes des Viſcontes & de loꝛ miniſtres des foꝛes & des foꝛeſtiers, & des Warennes, et des Warrenniers & des Riviers, & de loꝛ gardes ſaluz. Nos vos mandons que ſenz delai ſaiſiez en noſtre main les terres, & les tevemenz, et les chateis de toz celz del Conte de Suthanteſire qui ne vodꝛont jurer as xxv. Barons ſolonc la foꝛme qui eſt eſcritte en noſtre chartre des franchiſes, o a celz quil auront a co atoꝛnez; et s'il ne volent jurer maintenant empꝛes quince joꝛz acompliz, puiſque loꝛ terres et loꝛ tenement, et loꝛ chatel ſeront ſeiſi en noſtre main: faites vendꝛe toz loꝛ chatelz, et les deniers qui en ſeront pꝛis gardez ſauvement a metre en laie de la ſainte terre de Jeruſalem; et loꝛ terres et loꝛ tenemenz tenez en noſtre main juſquil aient jure, et co ſu pourveiu par le jugement l' Arceveſke Stefne de Cantoꝛbire et des Barons de noſtre Regne. Et en teſmoig de ceſte choſe nos enveons ceſtes nos lettres overtes. Teſmoig mei meiſme. A Odibeam le vint et ſeptain joꝛ de Juig, lan de noſtre Regne dis et ſeptain.

FINIS.

The ARTICLES upon which the Great Charter of King John *was framed: Taken out of a Manuſcript of the Archbiſhop of* Canterbury *Fol.* 14. *The Original whereof, with the Great Seal annexed, is extant in the hands of Dr.* Gilbert Burnet, *now Biſhop of* Salisbury.

THeſe are the Particulars which the Barons demand, and the King grants, Signed with King *John*'s Seal.

Heirs of full age ſhall have their Inheritance after the deceaſe of their Anceſtors, paying the Ancient Relief to be expreſt in the Charter.

Heirs within age, and that have been in Ward, ſhall have their Inheritance, when they come at age, without paying Relief or making fine.

The Guardian of an Heirs Land ſhall take the reaſonable Iſſues, Cuſtoms and Services, without deſtruction or waſte of his Men or Goods. And if ſuch Guardian make deſtruction and waſte, he ſhall loſe the Wardſhip, and the Guardian ſhall keep in repair the Houſes, Parks, Ponds, Pools, Mills and other Appurtenances to the Eſtate out of the Profits of the Land. And ſhall take care that the Heirs be married without diſparagement, and by the Advice of their near Kindred,

That a Widow ſhall give nothing for her Dower or Marriage after the death of her Husband, but ſhall be ſuffered to dwell in her Husband's Houſe Ninety days after his death; within which time her Dower ſhall be aſſigned her, and ſhe ſhall immediately have her Marriage and her Inheritance. The King nor his Bayliff ſhall not ſeize any Land for debt, if the Debtors Goods be ſufficient; nor ſhall the Debtors Sureties be diſtrain'd upon, when the Debtor himſelf is able to pay the Debt. But if the Debtor fail of payment, the Sureties, if they will, may have the Debtors Lands, till the Debt be fully ſatisfied, unleſs the Principal Debtor can ſhew that he is quit againſt his Sureties.

The King ſhall not allow any Baron to take Aide of his free Tenants, but for the Redemption of his Perſon, for the making his Eldeſt Son a Knight, and towards the Marriage of his Eldeſt Daughter once, and hereunto he ſhall have but a Reaſonable Aid.

That none ſhall do more Service for a Knights Fee, than is due for the ſame. That Common Pleas ſhall not follow the King's Court, but ſhall be holden in ſome certain Place: And that Recognitions be taken in their proper Counties, and after this manner, *viz.* That the King ſhall ſend two

Juſtices four times a year, who together with four Knights of the ſame Shire, choſen by the Shire, ſhall take *Aſſizes* of *Novel diſſeiſin*, *Mordanceſter*, and *Darrein preſentment*; nor ſhall any be ſummoned hereunto, but the Jurors and the two Parties.

That a Freeman ſhall be amerced for a ſmall fault after the manner of the fault, and for a great fault according to the Greatneſs of the fault, ſaving his Contenement. A Villain alſo ſhall be amerced ſaving his Wainage, and in like manner a Merchant, ſaving his Merchandiſe, by the Oath of good Men of the Vicinage: That a Clerk ſhall be amerced according to his Lay-fee in manner aforeſaid, and not according to his Eccleſiaſtical Benefice.

That no Town be amerced for not making Bridges nor Banks, but where they have been of old time, and of Right ought to be.

That the meaſure of Wine, of Corn, and the breadth of Cloth, and the like, be rectified, and ſo of Weights.

That *Aſſizes* of *Novel Diſſeizin* and *Mordanceſter* be abbreviated, and ſo of other Aſſizes.

That no Sheriff ſhall entermeddle with Pleas of the Crown without the Coroners; and that Counties and Hundreds ſhall be at the ancient Farms without any Encreaſe, except the King's own Demeſn Mannors.

If any Tenant of the King die, the Sheriff, or other the Kings Bayliff may ſeize and enroll his Goods and Chattels by the view of lawful Men; but yet ſo as that nothing thereof be taken away, till it be fully known whether he owe any clear debt to the King; and then the Kings Debt ſhall be paid, and the Reſidue ſhall remain to the Executors to perform the Teſtament of the Dead. And if nothing be owing to the King, all the Goods ſhall go to the uſe of the dead.

If any Free-man dye Inteſtate, his Goods ſhall be diſtributed by his neareſt Kindred and Friends, and by the view of the Church.

Widows ſhall not be diſtrain'd to marry, if they are minded to live unmarried, provided they find Sureties, that they will not marry without the King's Aſſent, if they hold of the King, or without the Conſent of their Lords of whom they hold.

No Conſtable or other Bayliff ſhall take any Man's Corn or other Chattels, but he ſhall forthwith pay for the ſame, unleſs he may have reſpit by conſent of the Seller.

That no Conſtable ſhall diſtrain any Knight to give Money for the keeping of his Caſtle, if he himſelf will do it in his own proper Perſon, or by another ſufficient man, if he may not do it himſelf for a reaſonable Cauſe. And if the King lead him in his Army, he ſhall be diſcharged of Caſtle-ward for the time.

No Sheriff or Bayliff of the King, nor any other perſon ſhall take the Horſes or Carts of any Free-man to make carriage without his leave.

The King, nor his Bayliffs ſhall not take any Man's Wood for Caſtles or other Occaſions, but by Licenſe of him whoſe the Wood is.

That the King do not hold the Lands of them that be convicted of Felony longer then a year and a day; after which they ſhall be delivered to the Lord of the Fee.

That

That all Wears from henceforth be utterly put down in *Thames* and *Medway*, and throughout all *England*.

That the Writ called *Precipe* be not from henceforth granted to any person of any Freehold, whereby a Freeman may lose his Court.

If any be disseiz'd or delay'd by the King, without Judgment, of Lands, Liberties, or other his Right, he shall forthwith have restitution; and if any Dispute arise upon it, it shall be determin'd by the Judgment of the Five and twenty Barons. And such as have been disseiz'd by the King's Father, or his Brother, shall have Right immediately by the Judgment of their Peers in the King's Court. And if the King must have the Term of others that had taken upon them the Cross for the Holy Land, the Archbishop and Bishops shall give Judgment therein, at a certain day to be prefixt, without Appeal.

That nothing be given for a Writ of Inquisition of Life or Member, but that it be freely granted without price, and be not denyed.

If any hold of the King by Fee-farm, by Socage, or Burgage, and of any other by Knight's Service, the King shall not have the Custody of the Heir, nor of his Lands that are holden of the Fee of another, by reason of such Burgage, Socage or Fee-farm: Nor ought the King to have the Custody of such Burgage, Socage or Fee-farm; and no Freeman shall lose his Degree of Knighthood by reason of petty Serjeanties, as when a Man holds Lands, rendring therefore a Knife, an Arrow, or the like.

No Bayliff shall put any man to his Law, upon his own bare saying, without faithful Witnesses.

That the Body of a Free-man be not taken, nor imprisoned, nor that he be disseiz'd, nor Out-law'd, nor Exil'd, nor any way destroyed.

Nor that the King pass upon him, or imprison him by force, but only by the Judgment of his Peers, or by the Law of the Land.

That Right be not sold, nor delay'd, nor denyed.

That Merchants have liberty to go and come safely to buy and sell, without any manner of Evil Tolls, by the Old and Lawful Customs.

That no Escuage or Aid be laid upon the Kingdom, but by the Common-Council of the Kingdom; unless it be to redeem the King's Person, or to make his eldest Son a Knight, or to marry his eldest Daughter once; and for these a reasonable Aid shall be given. That it be in like manner with respect to Tallages and Aids from the City of *London*, and other Cities that have Priviledges therein: And that the City of *London* may fully enjoy her ancient Liberties and free Customs, as well by Water, as by Land.

That it shall be lawful for any Man to go out of the Kingdom, and to return, saving his Allegiance to the King, unless it be in time of War for a short time, for the common profit of the Realm.

If any borrow Money of a *Jew*, be it more or less, and die before the Debt be paid, no Interest shall be paid for the same so long as the Heir is under age, of whomsoever he hold. And if the Debt become due to the King, the King shall take no more than what is contain'd in the Charter.

If any Man die and owe Money to the *Jews*, his Wife ſhall have her Dower; and if he left Children, Neceſſaries ſhall be provided them according to the quantity of the Freehold, and the reſidue ſhall go to pay off the Debt, ſaving the Services due to the Lords. The like ſhall be obſerved in caſe of other Debts, and when the Heir comes of age, his Guardian ſhall reſtore him his Land as well ſtockt as he could reaſonably afford out of the Profits of the Land, coming in by the Plough and the Cart.

If any Man hold of any Eſcheat, as of the Honour of *Wallingford*, and *Nottingham*, *Bonon*, and *Lancaſter*, or of other Eſcheats, which are in the King's Hand and are Baronies, and die, his Heir ſhall pay no other Relief, nor perform any other Service then he ſhould have paid and perform'd to the Baron, and that the King ſhall hold ſuch Eſcheats as the Barons held them.

That Fines made for Dowers, Marriages, Inheritances and Amercements, wrongfully and contrary to the Law of the Land, be freely remitted, or ordered by the Judgment of the Five and twenty Barons, or of the major part of them, together with the Archbiſhop and ſuch as he ſhall call to him; Provided that if one or more of the Five and twenty have themſelves any like complaint, that then he or they ſhall be removed, and others put in their rooms by the reſidue of the Five and twenty.

That the Hoſtages and Deeds be reſtored, which were deliver'd to the King for his Security.

That they that live out of the Foreſt be not obliged to come before the Juſtices of the Foreſt by common Summons, unleſs they be Parties or Pledges: And that the Evil Cuſtoms of the Foreſts and Foreſters, Warrens, and Sheriffs, and Ponds be redreſs'd by twelve Knights of each County, who ſhall be choſen by the Good Men of the County.

That the King remove wholly from their Bayliff-wick, the Kindred and whole Dependance of *Gerard de Aties*, that hereafter they have no Bayliff-wick, to wit, *Engeland*, *Andr' Peter' Gigo de Cances*, *Gigo de Cygon*, *Matthew de Martino*, and his Brethren, and *Gelfrid* his Nephew, and *Phillip de Mark*.

And that the King put away the Foreign Soldiers, Stipendaries, Slingers, and Troopers, and their Servants, who came with Horſes and Arms to the Nuſance of the Realm,

That the King make Juſtitiars, Conſtables, Sheriffs and Bayliffs of Men that know the Law of the Land, and will cauſe it to be well obſerved.

That Barons who have founded Abbies, for which they have Charters of Kings, or ancient Tenure, ſhall have the Cuſtody of them when they are vacant.

If the King have diſſeiz'd the *Welſh* men, or eſloyn'd them from Lands or Liberties, or of other things in *England* or in *Wales*, let them preſently be reſtored to them without Plea: and if they have been diſſeiz'd or eſloin'd from their *Engliſh* Tenements by the King's Father or his Brother, without Judgment of their Peers, the King ſhall without delay do them Juſtice, as he does Juſtice to *Engliſhmen* of their *Engliſh* Tenements

Tenements, according to the Law of *England*, and of *Welſh* Tenements, according to the Law of *Wales*, and of Tenements in the *Marches*, according to the Law of the *Marches*. In like manner the *Welſhman* ſhall do to the King and his Subjects.

That the King reſtore *Lewelin*'s Son, and all the *Welſh* Hoſtages, and the Deeds that were delivered to him for ſecurity of the Peace.

That the King do Right to the King of *Scotland* concerning reſtoring of Hoſtages, and his Liberties and Right, according to the Form of the Agreement with his Barons of *England*, unleſs it ought to be otherwiſe by vertue of ſome Deeds which the King has, by the Judgment of the Archbiſhop and others, whom he ſhall think fit to call to him.

That all Foreſts that have been afforeſted by the King in his own time be diſafforeſted, and ſo of Banks, which by the King himſelf have been put in defence.

All theſe Cuſtoms and Liberties, which the King has granted to the Kingdom, to hold and keep for his own part towards his Men, all Clerks and Lay-men of the Kingdom ſhall obſerve and keep for their parts towards their Men.

This is the Form of the ſecurity for keeping Peace and the Liberties betwixt the King and the Kingdom. The Barons ſhall chuſe Five and twenty Barons of the Realm, whom they will themſelves, upon whom it ſhall be encumbent, that with all their might they obſerve and keep, and cauſe to be obſerv'd and kept, the Peace and Liberties which the King has granted to them, and confirm'd by his Charter, to wit, "That if the "King, or his Juſtices, or Bayliffs, or any of his Miniſters, offend any Per- "ſon contrary to any of the ſaid Articles, or tranſgreſs any Article of "this Peace and Security: And that ſuch offence be made known to four "of the ſaid Five and Twenty Barons; thoſe four Barons ſhall go to the "King, or to his Juſtitiar, if the King be out of the Realm, declaring "to him that ſuch an abuſe is committed, and ſhall deſire him to cauſe "it ſpeedily to be redreſſed. And if the King, or (if he be out of the "Realm,) his Juſtitiar do not redreſs it, thoſe four Barons ſhall within a "reaſonable time to be limited in the Charter, refer the matter to the re- "ſidue of the Five and twenty Barons. And thoſe Five and twenty, with "the Commonalty of all the Land, ſhall diſtreſs the King all the ways they "can, to wit, by ſeizing his Caſtles, his Lands and Poſſeſſions, and by "what other means they can, till it be redreſt according to their good like- "ing, ſaving the Perſon of our Lord the King, and of the Queen and of "their Children. And when it is redreſt, they ſhall be ſubject to the King, as before. And whoever will, may ſwear to put theſe things in Execution, *viz.* To obey the Commands of the ſaid Five and twenty Barons, and to diſtreſs the King, to the utmoſt of his Power with them. And the King ſhall give publick and free Liberty for any man to ſwear that will, and ſhall never pohibit any to ſwear. And all thoſe of the Nation, who will voluntarily of their own accord, ſwear to the Five and twenty Barons, to diſtreſs the King with them, the King himſelf ſhall iſſue his Præcept, Commanding them to ſwear as aforeſaid.

Item,

Item, If any of the ſaid Five and Twenty Barons dye, or go out of the Realm, or be any other way hindred from performing theſe things, the reſidue of the Five and twenty ſhall chuſe another, whom they think beſt, in his place, who ſhall be ſworn as the reſt are. And in all matters referred to thoſe Five and twenty Barons, if they happen to be all preſent, and differ amongſt themſelves, or if any of them being thereto appointed, will not or cannot come, what the major part of them ſhall agree upon and enjoyn ſhall be valid, as if all the Five and twenty had agreed in it. And the ſaid Five and twenty ſhall ſwear that they will faithfully obſerve and keep the Articles aforeſaid, and with all their might cauſe them to be obſerved. Moreover the King ſhall give them the Securities of the Archbiſhop and Biſhops, and Maſter *Pandulphus*, that he will not obtain any thing from the Pope, whereby any of theſe Articles of Agreement may be revoked or diminiſhed. And if any ſuch thing be obtain'd, that it be reputed void and of none effect, nor ſhall ever be made uſe of.

THE

THE GREAT CHARTER OF KING *JOHN*.

A True Copy, from the Original *French*.

'*JOHN* by the Grace of God King of *England*, to the Archbiſhops, Biſhops, Abbots, Earls, Barons, Juſtices, Foreſters, Sheriffs, Prevoſts, Miniſters, and all his Bayliffs and his Lieges, Greeting. Know ye that We by the Grace of God, and for the ſaving of our Soul, and the Souls of all our Anceſtors, and of our Heirs, and for the Honour of God, and the ſafety of Holy Church, and for the amendment of our Government, By the Advice of Our Honoured Fathers, *Stephen* Archbiſhop of *Canterbury*, Primate of All *England*, and Cardinal of *Rome*; *Henry* Archbiſhop of *Dublin*, *William* Biſhop of *London*, Peter Biſhop of *Wincheſter*, *Jocelin* Biſhop of *Bath*, *Hugh* Biſhop of *Lincoln*, *Walter* Biſhop of *Worceſter*, *William* Biſhop of *Cheſter*, *Benedict* Biſhop of *Rocheſter*, and Maſter *Pandulph* Sub-deacon of our Lord the Apoſtle, and of our Friend and Brother *Aner* Maſter of the Order of Knights Templers in *England*; And by the Advice of our Barons, *William* Earl Marſhal Earl of *Pembroke*, *William* Earl of *Salisbury*, *William* Earl of *Warren*, *William* Earl of *Arundel*, *Alan* of *Galloway* Conſtable of *Scotland*, *Warin Fitz-Gerard*, *Peter Fitz-Herbert*, *Hubert de Burgh* Steward of *Poictou*, *Hugh Nevill*, *Matthew Fitz-Herbert*, *Thomas Baſſet*, *Alan Baſſet*, *Phillip d' Aubenie*, *Robert de Ropelee*, *John Marſhall*, and *John Fitz-Hugh*, and by the Advice of other our Lieges,

'Have in the firſt place granted to God, and confirmed by this our preſent Charter, for us and for our Heirs for ever, That the Churches of *England* ſhall be free, and ſhall enjoy their Rights and Franchiſes entirely and fully: And this our Purpoſe is, that it be obſerved, as may appear by our having granted, of our meer and free Will, that Elections ſhould be free (which is reputed to be a very great and very neceſſary

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'ceſſary Priviledges of the Churches of *England)* before the difference a-'roſe betwixt Us and our Barons, and by our having confirm'd the ſame 'by our Charter, and by our having procur'd it moreover to be confirmed 'by our Lord the Apoſtle *Innocent* the third: Which Priviledge We will 'maintain: And our Will is, that the ſame be faithfully maintain'd by our 'Heirs for ever.

'We have alſo granted to all the Free-men of our Kingdom, for us 'and our Heirs for ever, all the Liberties hereafter mentioned, to have and 'to hold to them and their Heirs of Us and our Heirs.

If any of our Earls, our Barons, or others that hold of us in Chief by 'Knight-Service, die, and at the time of his death his Heir be of full age, 'and Relief be due, he ſhall have his Inheritance by the ancient Relief; 'to wit, the Heir or Heirs of an Earl, for an entire Earldom, C pounds; 'the Heir or Heirs of a Baron, for an entire Barony, C Marks; the Heir or 'Heirs of a Knight, for a whole Knights Fee, C Shillings at moſt; and 'where leſs is due, leſs ſhall be paid, according to the ancient Cuſtoms of 'the ſeveral Tenures.

'If the Heirs of any ſuch be within Age and in Ward, they ſhall 'have their Inheritance when they come of Age without Relief and with-'out Fine.

'The Guardians of the Land of ſuch Heirs being within age, ſhall take 'nothing out of the Land of the Heirs, but only the reaſonable Profits, 'reaſonable Cuſtoms, and reaſonable Services, and that without making de-'ſtruction or waſt of Men or Goods.

'And if we ſhall have committed the Cuſtody of the Land of any ſuch 'Heir, to a Sheriff or any other, who is to account to us for the Profits of 'the Land, and that ſuch Committee make deſtruction or waſt, We will 'take of him amends, and the Land ſhall be committed to two lawful 'and good Men of that Fee, who ſhall account for the Profits to us, or to 'ſuch as we ſhall appoint.

'And if we ſhall give or ſell to any Perſon, the cuſtody of the Lands 'of any ſuch Heir, and ſuch Donee or Vendee make deſtruction or waſt, 'he ſhall loſe the Cuſtody, and it ſhall be committed to two Law-'ful, Sage, and Good Men, who ſhall account to Us for the ſame, as 'aforeſaid.

'And the Guardian, whilſt he has the Cuſtody of the Heirs Land, ſhall 'maintain the Houſes, Ponds, Parks, Pools, Mills, and other Appurte-'nances to the Land, out of the Profits of the Land it ſelf; and ſhall re-'ſtore to the Heir, when he ſhall be of full age, his Land well ſtockt, 'with Ploughs, Barns, and the like, as it was when he receiv'd it, and as the 'Profits will reaſonably afford.

'Heirs ſhall be married without diſparagement; inſomuch that before 'the Marriage be contracted, the Perſons that are next of Kin to the Heir, 'ſhall be made acquainted with it.

'A Widow after the death of her Husband, ſhall preſently and without 'oppreſſion, have her Marriage and her Inheritance; nor ſhall give any 'thing for her Marriage, nor for her Dower, nor for her Inheritance, 'which ſhe and her Husband were ſeiz'd of the day of her Husband's death;

'and

'and she shall remain in her Husband's House Forty Days after his death; 'within which time her Dower shall be assign'd her.

'No Widow shall be compelled to marry if she be desirous to live single, 'provided she give Security not to marry without our leave, if she 'hold of us, or without the Lord's leave, of whom she holds, if she hold 'of any other.

'We nor our Bayliffs, will not seize the Lands or Rents of a Debtor, for 'any Debt, so long as his Goods are sufficient to pay the Debt: Nor shall 'the Pledges be distrain'd upon, whilst the Principal Debtor is able to pay 'the Debt. But if the Principal Debtor have not wherewith to pay the 'Debt, the Pledges shall answer for it: And if they will, they shall have 'the Lands and Rents of the Debtor, till they have received the Debt 'which they payed for him, if the Principal Debtor cannot show that he 'is quit against his Pledges.

'If any Persons have borrowed Money of *Jews*, more or less, and die 'before they have paid the Debt, the Debt shall not grow whilst the Heir 'is under age; and if such Debt become due to us, we will take no more 'than the Goods expreſt in the Deed.

'And if any die and owe a Debt to the *Jews*, his Wife shall have her 'Dower, and shall be charged with no part of the Debt; and if the 'Children of the deceased Person be within age, their reasonable Estovers 'shall be provided them, according to the value of the Estate which their 'Ancestor had, and the Debt shall be paid out of the Residue, saving the 'Services due to the Lord: In like manner shall it be done in Cases of Debts 'owing to other persons that are not *Jews*.

'We will impose no Escuage nor Aids within our Realm, but by the 'Common Council of our Realm, except for our Ransom, and for the 'making our eldest Son a Knight, and for marrying our eldest Daugh-'ter once: And for these purposes there shall but a reasonable Aid be 'required.

'In like manner shall it be done within the City of *London*: and more-'over the City of *London* shall have all her ancient Customs and Liberties, 'by Land and Water.

'We Will moreover and Grant, that all other Cities, and Boroughs, and 'Towns, and Ports, have in all respects their Liberties and free Customs.

'And as for coming to the Common Council of the Kingdom, and for assess-'sing Aids, (except in the three cases aforesaid.) And as for the assessing 'of Escuage, we will cause to be summoned the Archbishops, Bi-'shops, Abbots, Earls, and the Greater Barons, each in particular 'by our Letters, and moreover we will cause to be summon'd in ge-'neral, by our Sheriffs and Bayliffs, all that hold of us in Chief, at a cer-'tain day, to wit, Forty days after at least, and at a certain place: and in 'our said Letters we will expreſs the cause of the Summons. And when 'Summons shall be so made, business shall go on at the day assign'd, by 'the Advice of such as are present, though all that are summoned do not 'appear.

'We will not allow for the future, that any take Aid of his free 'men, but only to ransom his Person, to make his eldest Son a Knight,

'and to marry his eldeſt Daughter once; and for theſe purpoſes there ſhall 'but a reaſonable Aid be given.

'None ſhall be diſtrained to do greater Service for a Knight's Fee, 'or for any other Frank-Tenement then what is due by his Tenure.

'Common Pleas ſhall not follow our Court, but ſhall be held in a cer-'tain place.

'Recognizances of Novel Diſſeiſin, Mordanceſter, and Darrein preſentment, 'ſhall be taken no where but in their proper Counties, and in this man-'ner: We, or our Chief Juſtice (if our Selves ſhall be out of the Realm) 'will ſend two Juſtices through every County four times a year, who with 'four Knights of every County, to be choſen by the County, ſhall 'take the ſaid Aſſizes in the Country, at a day when the County Court is 'held, and in a certain place; and if the ſaid Aſſizes cannot be taken up-'on that day, ſo many Knights and free Tenants of them that were preſent 'in the County Court that day, ſhall ſtay, as may give a good Judgment, 'according as the concern may be greater or leſs.

'A Free man ſhall not be amerced for a little offence, but according to the 'manner of his offence, and for a great offence he ſhall be amerced ac-'cording to the greatneſs of his offence, ſaving his Contenement: And 'ſo a Merchant ſaving his Merchandiſe: And a Villain in like manner ſhall 'be amerced ſaving his Wainage, if he fall into our Mercy: and none of 'the ſaid Amercements ſhall be aſſeered, but by Oaths of good and lawful 'Men of the Viſinage.

'An Earl and a Baron ſhall not be amerced but by their Peers, and accor-'ding to the manner of their Offence.

'No Clerk ſhall be amerced but according to his Lay-fee, and in like 'manner as others aforeſaid, and not according to the quantity of his 'Church Living.

'No Ville nor any man ſhall be diſtrain'd to make Bridges over Rivers, 'but where they anciently have, and of Right ought to make them.

'No Sheriffs, Conſtables, Coroners, nor other our Bayliffs ſhall hold the 'Pleas of our Crown.

'All Counties, Hundreds, Wapentakes and Tythings ſhall be at the an-'cient Farms without being rais'd, except our own demeſne Mannors.

'If any that holds of us a Lay-fee dye, and our Sheriffs, or other our 'Bayliffs, ſhow our Letters Patents of Summons for a Debt, which the de-'ceaſed owed to us, our Sheriff or Bayliff may well Attach and Inventory 'the Goods of the Dead, which ſhall be found upon his Lay-fee to the va-'lue of the Debt, which the deceaſed owed to us, by the view of Lawful 'Men, yet ſo as nothing be removed till ſuch time as the Debt which ſhall 'be found to be due to us, be paid; and the reſidue ſhall go to the Exe-'cutors to perform the Teſtament of the dead: and if nothing be owing 'to us, all his Goods ſhall go to the uſe of the Dead, ſaving to his Wife and 'Children their reaſonable Parts.

'If any Free-man dye inteſtate, his Goods ſhall be divided by the hands 'of his near Kindred and Friends, by the view of Holy Church, ſaving to 'every one their Debts which the Dead owed them.

'None

'None of our Conſtables, nor other our Bayliffs, ſhall take the Corn, nor 'other the Goods of any Perſon, without paying for the ſame preſently, un-'leſs he have time given him by conſent of the Vendor.

'Our Conſtables ſhall diſtrain no man, who holds by Knight Service, to 'give Money for Caſtle-garde, if he has perform'd it himſelf in proper 'Perſon, or by another good Man, if he could not perform it himſelf for 'ſome reaſonable Cauſe: And if we lead him or ſend him into the Army, 'he ſhall be diſcharg'd of Caſtle-garde for ſo long time as he ſhall be with 'us in the Army.

'Our Sheriffs, our Bayliffs, nor other, ſhall not take the Horſes nor Carts 'of any Free-man, to make carriage, but by leave of ſuch Free-man.

'Neither our ſelves nor our Bayliffs ſhall take another Man's Wood for our 'Caſtles, or other occaſions, but by his leave whoſe Wood it is.

'We will hold the Lands of ſuch as ſhall be convict of Felony, but a year 'and a day, and then we will reſtore them to the Lords of the Fees.

'All Weares ſhall from this time forward be wholly taken away in '*Thames* and *Medeway*, and throughout all *England*, except upon the 'Sea-Coaſt.

'The Writ called *Precipe* henceforth ſhall be made to none out of any 'Tenement, whereby a Free-man may loſe his Court.

'One Meaſure of Wine ſhall be uſed throughout our Kingdom, and one 'Meaſure of Ale, and one Meaſure of Corn, to wit, the *London* Quart. 'And there ſhall be one breadth of dyed Cloth, Ruſſets, and Haubergets; 'to wit, two Ells within the Liſts: And concerning Weights, it ſhall be in 'like manner as of Meaſures.

'Nothing ſhall be given or taken henceforth for a Writ of Enquiſition of 'Life or Member, but it ſhall be granted freely and ſhall not be denyed.

'If any hold of us by Fee-farm, or by Socage, and hold likewiſe Land of 'others by Knight-Service, we will not have the Cuſtody of the Heir, nor 'of the Land which is of the Fee of another, by reaſon of ſuch Fee-farm, 'Socage or Burgage, unleſs ſuch Fee-farm owe Knight-Service.

'We will not have the Wardſhip of the Heir nor of the Land of any Per-'ſon, which he holds of another by Knight-Service, by reaſon of any Petit 'Serjeanty, by which he holds of us, as by the Service of giving us Arrows, 'Knives, or ſuch like.

'No Bayliff for the time to come ſhall put any Man to his Law upon his 'bare word, without good Witneſſes produced.

'No free man ſhall be taken nor impriſoned, nor diſſeiſed, nor outlawed, 'nor exil'd, nor deſtroy'd in any manner, nor we will not paſs upon him, 'nor condemn him, but by the Lawful Judgment of his Peers, or by the Law 'of the Land.

'We will ſell to none, we will deny, nor delay to none Right and 'Juſtice.

'All Merchants may with ſafety and ſecurity go out of *England*, and 'come into *England*, and ſtay, and paſs through *England* by Land and 'Water, to buy and ſell, without any Evil Tolls, paying the Ancient and 'Rightful Duties, except in time of War, and then they that are of the 'Country, with whom we are at War, and are found here at the begin-

'ing of the War, ſhall be attach't, but without injury to their Bodies or 'Goods, till it be known to us or to our Chief-Juſtice, how our Merchants 'are entreated, which are found in our Enemies Country, and if ours be 'ſafe there, they ſhall be ſafe in our Land.

'It ſhall be Lawful for all men in time to come, to go out of our King-'dom, and to return ſafely and ſecurely by Land and by Water, ſaving 'their Faith due to us, except it be in time of War, for ſome ſhort 'time, for the profit of the Realm. But out of this Article are except-'ed Perſons in Priſon, Perſons out-law'd according to the Law of the Land, 'and Perſons of the Country with whom we are at War; concerning 'Merchants, what is aboveſaid ſhall hold as to them.

'If any hold of any Eſcheat, as of the Honour of *Wallingford*, *Notting-'ham*, *Boloin*, *Lancaſter*, or of other Eſcheats, which are in our hand, and 'are Baronies, and dye, his Heirs ſhall owe us no other relief, nor do us 'any other Service, then was due to the Baron of ſuch Barony, when it 'was in his hand, and we will hold the ſame in like manner as the Baron 'held it.

'Men that dwell out of the Foreſt, ſhall not appear before our Juſtices 'of the Foreſt by common Summons, unleſs they be in ſuit themſelves, or 'Bail for others, who are attach't for the Foreſt.

'We will not make Sheriffs, Juſtices, nor Bayliffs, but of ſuch as know 'the Law of the Land, and will keep it.

'All that have founded Abbies, whereof they have Charters from Kings 'of *England*, or ancient Tenure, ſhall have the cuſtody thereof, whilſt they 'are vacant, as they ought to have.

'All the Foreſts that have been Afforeſted in our time, ſhall inſtantly 'be Diſafforeſted; in like manner be it of Rivers, that in our time and by 'us have been put in defence.

'All evil Cuſtoms of Foreſts and Warens, and of Foreſters, and Wa-'renners, of Sheriffs and their Miniſters, of Rivers, and of Guarding 'them, ſhall forthwith be enquired of in every County by twelve Knights 'ſworn of the ſame County, who muſt be choſen by good Men of the 'ſame County. And within forty days after they have made ſuch Inqui-'ſition, the ſaid evil Cuſtoms ſhall be utterly aboliſhed by thoſe ſame 'Knights, ſo as never to be revived; provided they be firſt made known 'to us, or to our Chief Juſtice, if we be out of the Realm.

'We will forthwith reſtore all the Hoſtages and all the Deeds, which 'have been delivered to us by the *Engliſh*, for ſurety of the Peace or of 'faithful Service.

'We will wholly put out of Bayliffwicks the Kindred of *Gerard de 'Aties*, ſo that from henceforth they ſhall not have a Bayliffwick in *Eng-'land*; and *Engeland de Cygoigni Peron*, *Guyon*, *Andrew de Chanceas*, *Gyon 'de Cygoigni*, *Geffry de Martigni* and his Brothers, *Philip*, *Mark* and his 'Brothers, *Geffray* his Nephew and all their Train: And preſently, after 'the Peace ſhall be reform'd, we will put out of the Realm all Knights 'Foreigners, Slingers, Serjeants and Soldiers, who came with Horſe or 'Arms to the nuſance of the Realm.

'If

'If any be disseiz'd or esloyn'd by us, without Lawful Judgement of his 'Peers, of Lands, Chattels, Franchises, or of any Right, we will forth-'with restore the same; and if any difference arise upon it, it shall be 'determined by the Judgement of the Five and twenty Barons, of whom 'mention is made hereafter in the security for the Peace.

'As to all things, whereof any have been disseiz'd, or esloyn'd without 'Lawful Judgement of their Peers, by King *Henry* our Father, or by King '*Richard* our Brother, which we have in our hands, or which any other 'has, to whom we are bound to warrant the same, we will have respit to 'the common Term of them that are crost for the Holy Land, except such 'things for which Suits were commenced, or Enqueſt taken by our Order 'before we took upon us the Cross. And if we return from the Pilgrimage, 'or perhaps forbear going, we will do full Right therein. The same Re-'spit we will have, and the same Right we will do in manner aforesaid, as 'to the Disafforesting of Forests, or letting them remain Forests, which 'the Kings, *Henry* our Father, or *Richard* our Brother have Afforested; and 'and as to Custodies of Lands which are of the Fee of other Persons, 'which we have held till now by reason of other Men's Fees, who held 'of us by Knight-Service; and of Abbies that are founded in other Men's 'Fees, in which the Lords of the Fees claim a Right: And when we shall 'be returned from our Pilgrimage, or if we forbear going, we will imme-'diately do full Right to all that shall complain.

'None shall be taken nor imprisoned upon the Appeal of a Woman, 'for the death of any other than her Husband.

'All the Fines and all the Amercements that are imposed for our use, 'wrongfully and contrary to the Law of the Land, shall be Pardoned; or else 'they shall be determined by the Judgment of the Five and twenty Ba-'rons, of whom hereafter, or by the Judgement of the greater number of 'them that shall be present, or before *Stephen* Archbishop of *Canterbury*, if 'he can be there, and those that he shall call to him; and if he cannot be 'present, Matters shall proceed notwithstanding without him; so always, 'that if one or more of the said Five and twenty Barons be concern'd in 'any such Complaint, they shall not give Judgement thereupon, but others 'chosen and sworn shall be put in their room to act in their stead, by the 'residue of the said Five and twenty Barons.

'If we have disseiz'd or esloin'd any Welshmen of Land, Franchises, or 'of other things, without lawful judgment of their Peers, in *England*, or in '*Wales*, they shall forthwith be restored unto them; and if Suits arise there-'upon, right shall be done them in the Marches by the Judgment of their 'Peers; of English Tenements according to the Law of *England*, and of 'Tenements in *Wales*, according to the Law of *Wales*; and Tenements in the 'Marches, according to the Law of the Marches: And in like manner shall 'the Welsh do to us and our Subjects.

'As for all such things, whereof any *Welshmen* have been disseiz'd or 'esloyn'd without Lawful Judgment of their Peers by King *Henry* our Father, 'or by King *Richard* our Brother, which we have in our hands, or which 'any others have, to whom we are bound to warrant the same, we will

'have

'have reſpit till the common Term be expir'd of all that croſt themſelves 'for the *Holy Land*, thoſe things excepted, whereupon Suits were Com-'menced or Enqueſts taken by our Order, before we took upon us the 'Croſs; and when we ſhall return from our Pilgrimage, or if peradven-'ture we forbear going, we will preſently cauſe full Right to be done there-'in, according to the Laws of *Wales* and before the ſaid Parties.

'We will forthwith reſtore the Son of *Lewellyn* and all the Hoſtages of '*Wales*, and the Deeds that have been delivered to us for ſecurity of the 'Peace.

'We will deal with *Alexander*, King of *Scotland*, as to the reſtoring him 'his Suitors and his Hoſtages, his Franchiſes and Rights, as we do with 'our other Barons of *England*, unleſs it ought to be otherwiſe by vertue of 'the Charters, which we have of his Father *William*, late King of *Scot-'land*, and this to be by the Judgment of his Peers in our Court.

'All theſe Cuſtoms and Franchiſes aforeſaid, which we have granted to be 'kept in our Kingdom, ſo far forth as we are concerned, towards our Men, 'all Perſons of the Kingdom, Clerks and Lay, muſt obſerve for their Parts 'towards their Men.

'And whereas we have granted all theſe things for God's ſake, and for 'the amendment of our Government, and for the better compremiſing the 'diſcord ariſen betwixt us and our Barons, We, willing that the ſame 'be firmly held and eſtabliſhed for ever, do make and grant to our Barons 'the ſcurity underwritten; to wit, That the Barons ſhall chuſe Five and 'twenty Barons of the Realm, whom they Liſt, who ſhall to their ut-'moſt Power keep and hold, and cauſe to be kept the Peace and the Li-'berties, which we have Granted and Confirmed by this our preſent 'Charter, inſomuch, that if we, or our Juſtice, or our Bayliff, or any of 'our Miniſters, act contrary to the ſame in any thing, againſt any Per-'ſons, or offend againſt any Article of this Peace and Security, and ſuch 'our Miſcarriage be ſhown to four Barons of the ſaid Five and twenty, 'thoſe four Barons ſhall come to us, or to our Juſtice, if we be out of 'the Realm, and ſhow us our Miſcarriage, and require us to amend the ſame 'without delay; and if we do not amend it, or, if we be out of the Realm, 'our Juſtice do not amend it within Forty days after the ſame is ſhown to 'us, or to our Juſtice, if we be out of the Realm, *then the ſaid Four 'Barons ſhall report the ſame to the reſidue of the ſaid Five and twenty 'Barons, and then thoſe Five and twenty Barons, with the Commonalty of all* 'England, *may diſtreſs us by all the ways they can; to wit, by ſeizing 'on our Caſtles, Lands and Poſſeſſions, and by what other means they can, 'till it be amended, as they ſhall adjudge; ſaving our own Perſon, the 'Perſon of our Queen, and the Perſons of our Children*; and when it is 'amended, they ſhall be ſubject to us as before. And whoever of the 'Realm will, may ſwear, that for the Performance of theſe things, he will 'obey the Commands of the ſaid Five and twenty Barons, and that together 'with them, he will diſtreſs us to his Power: And we give Publick and free 'leave to ſwear, to all that will ſwear, and will never hinder any one: 'And for all Perſons of the Realm, that of their own accord will ſwear to,

'the

'the ſaid Five and twenty Barons, to diſtreſs us, we will iſſue our Precept, 'Commanding them to ſwear as aforeſaid.

'And if any of the ſaid Five and twenty Barons die, or go out of the Realm 'or be any way hindred from acting as aforeſaid, the reſidue of the ſaid 'Five and twenty Barons ſhall chuſe another in his room, according to their 'diſcretion, who ſhall ſwear as the others do.

'And as to all things which the ſaid Five and twenty Barons are to do, 'if peradventure they be not all preſent, or cannot agree, or in caſe any of 'thoſe that are Summon'd, cannot or will not come, whatever ſhall be de-'termined by the greater number of them that are preſent, ſhall be good and 'valid, as if all had been preſent.

'And the ſaid five and twenty Barons ſhall ſwear that they will faithfully 'obſerve all the matters aforeſaid, and cauſe them to be obſerved to their 'power.

'And we will not obtain of any one for our ſelves, or for any other, any 'thing whereby any of theſe Conceſſions, or of theſe Liberties may be re-'voked or annihilated; and if any ſuch thing be obtained, it ſhall be null 'and void, nor ſhall ever be made uſe of by our ſelves or any other.

'And all ill will, diſdain, and rancour, which has been betwixt Us and our 'Subjects of the Clergy and Laity, ſince the ſaid diſcord began, we do fully 'releaſe and pardon to them all. And moreover all Treſpaſſes that have 'been committed by occaſion of the ſaid diſcord ſince *Eaſter*, in the ſix-'teenth year of our Reign, to the reſtoring of the Peace, we have fully 'releaſed to all Clerks and Lay-men, and ſo far as in us lies we have fully 'pardoned them: And further we have cauſed Letters Patents to be made 'to them in teſtimony hereof, witneſſed by *Stephen* Archbiſhop of *Can-'terbury*, *Henry* Archbiſhop of *Dublin*, and by the aforeſaid Biſhops, and 'by Mr. *Pandulphus* upon this Security and theſe Conceſſions: Whereby 'we will and ſtrictly Command, that the Church of *England* be free, and 'enjoy all the ſaid Liberties, and Rights, and Grants well and in Peace 'freely and quietly, fully and entirely to them and their Heirs in all things, 'in all places, and for ever as aforeſaid. And we and our Barons have 'ſworn that all things above written, ſhall be kept on our parts in good 'Faith without ill deſign. The Witneſſes are the Perſons above-named and 'many others.

'This Charter was given at the Meadow called *Running-Mead*, be-'twixt *Windſor* and *Stanes*, the *15th* day of *June*, in the Seventeenth Year 'of our Reign.

'JOHN by the Grace of God King of *England*, to the Sheriff of *Hamp-* 1215.
'*ſhire*, and to the Twelve that are choſen in that County, to enquire of and 'put away the evil cuſtoms of Sheriffs, and of their Miniſters, of Foreſts, 'and Foreſters, of Warrens and Warrenners, of Rivers, and of guarding 'them, Greeting. We command you, that without delay, you ſeize in-'to our Hand, the Lands and Tenements, and the Goods of all thoſe of 'the County of *Southampton*, that will not ſwear to the ſaid Five and twenty 'Barons, according to the form expreſt in our Charter of Liberties, or to 'ſuch as they ſhall have thereunto appointed; and if they will not ſwear

'preſently,

'presently, at the end of Fifteen days after their Lands and Tenements 'and Chattels are seized into our Hands, that ye sell all their Goods, and 'keep safely the Money that ye shall receive for the same, to be em-'ployed for the Relief of the Holy Land of *Jerusalem*; and that ye keep 'their Lands and Tenements in our Hands till they have sworn, or that '*Stephen* Archbishop of *Canterbury*, and the Barons of our Kingdom have 'given Judgment thereupon. In witness whereof we direct unto you these 'our Letters Patents. Witness our Self: At *Odihaam* the Seven and twen-'tieth Day of *June*, in the Seventeenth Year of our Reign.

FINIS.

Books lately Printed for Richard Chiswell.

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The History of the Desertion; or an Account of all the Publick Affairs in *England*, from the beginning of *September* 1688. to the Twelfth of *February* following. With an Answer to a Piece called, *The Desertion discussed*, in a Letter to a Country Gentleman. By a Person of Quality.

K. *William* and K. *Lewis*, wherein is set forth the inevitable necessity these Nations lie under of submitting wholly to one or other of these Kings: And that the matter in Controversie is not now between K. *William* and K. *James*, but between K. *William* and K. *Lewis* of *France*, for the Government of these Nations.

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